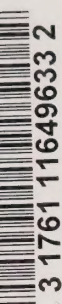


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Ontario. Royal Commission inquiry into labour  
disputes.

Thompson V. 24 April 1962.







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**ROYAL COMMISSION**  
**INQUIRY INTO LABOUR DISPUTES**

563

**HEARINGS HELD AT**  
**TORONTO**

**VOL. NO.**

**DATE**

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April 19, 1967

*Official Reporters*

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**48 YORK STREET**  
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**TELEPHONE 363-3111**







IN THE MATTER OF The Public  
Inquiries Act, R.S.O. 1960,  
Ch. 323

- and -

IN THE MATTER OF an Inquiry  
Into Labour Disputes

BEFORE:

The Honourable Ivan C. Rand,  
Commissioner, at 123 Edward  
Street, Toronto, Ontario,  
on Wednesday, April 19, 1967

E. Marshall Pollock Counsel to the Commission

APPEARANCES:

Mr. Mahoney	)	The United Steel Workers
Mr. Sefton	)	of America
Mr. Storey	)	
Mr. Ingle	)	
Mr. Park	)	

Nethercut & Young Limited, Official Reporters  
48 York Street, Toronto, Ontario. Per: Mr.  
F.J. Nethercut.

IN THE MATTER OF THE  
Estate of J. Edgar Hoover  
No. 100

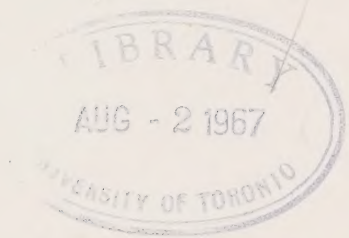
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IN THE MATTER OF THE  
Estate of J. Edgar Hoover

The undersigned, J. Edgar Hoover,  
being a resident of the District of  
Columbia, do hereby certify that  
the foregoing is a true and correct  
copy of the original as the same  
exists in my possession.

Witness my hand and seal this 1st day of

the 1st day of August, 1967.



IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of August, 1967.



*Nethercut & Young**Toronto, Ontario*

1 ---On Commencing at 10:00 A.M.

2  
3 MR. POLLOCK: The United Steel Workers  
4 of America. Mr. Mahoney, Mr. Sefton, Mr. Storey, Mr.  
5 Ingle and Mr. Park.

6 We have both read your brief with con-  
7 siderable interest. The manner of presentation is  
8 up to yourselves. If you want to deal with the points  
9 seriatim as you go along with your presentation  
10 that is perfectly fine. If you want to read the  
11 parts of it, do so. The presentation is up to you

12 MR. MAHONEY: Mr. Commissioner, Director  
13 Sefton, who is Director of District 6. We have an  
14 internall commission of the congress studying the  
15 labour movement. He is on this commission and will not  
16 be able to be with us through the whole piece. I would  
17 therefore like to call on him to make a few preliminary  
18 remarks as he had some of the responsibility of pre-  
19 paring this submission.

20 MR. SEFTON: Mr. Commissioner, I have  
21 already made my apology to you that I would not be  
22 able to be here for the hearing today, because of  
23 other responsibilities. I am in full accord with  
24 the things that are <sup>in</sup> / the brief and, of course, my  
25 colleagues here will spend as long as you wish to  
26 have them here to talk to you about the points. I  
27 am also the Chairman of the White Collar Committee  
28 in the Canadian Labour Congress and I just wanted to  
29 point out that in the end of our brief, there are a  
30 couple of points we have made about organization of  
white collar workers and office workers. We feel  
that the law and the procedures of the Labour





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1 Relations Board along with a number of other things  
2 but certainly definitely because of these procedures  
3 makes it very difficult, if not impossible in a lot  
4 of cases, to organize and get certified for white  
5 collar workers.

6 We, in our Union, have organized - I  
7 just forget offhand, I think 30 or 35 units and we  
8 have had a number of cases in the last couple of years  
9 where the delays in the certification period take well  
10 over a year. We think this is a severe injustice. We have made  
11 some recommendations for changes in the procedures  
12 and also a recommendation to limit the time that the  
13 application for certification can be questioned. Of  
14 course, the basis for this is, surely if we apply  
15 for a group of people in an office, the company must  
16 know what they are doing and what their duties are,  
17 and I think a reasonable time limit for them to make  
18 their case before the Board can be expected and should  
19 be available for people in this field who are trying  
20 to get organized. Unless we get some relief in this  
21 it is continuing to be tremendously difficult and I  
22 suppose that old saw , almost a truism of justice  
23 delayed is no justice at all would be particularly  
24 applicable in these kinds / <sup>of</sup> situations. It is some-  
25 thing that we think this main producing province in  
26 Ontario should give a little bit of leadership to,  
27 and we would urge your Commission to have a serious  
28 look at this injustice. As you know, there has been  
29 a lot of desire on the part of white collar people in  
30 government and some of the professions and in the





1 offices now to obtain the benefits of organization and  
2 collective bargaining, and we think the law, the Labour  
3 Relations Act, is archaic in the way it prevents some  
4 of them from getting it. These cases can be cited  
5 by our people to you here in more detail as they  
6 progress.

7 That is all I would like to say.

8 MR. POLLOCK: From those remarks, Mr.  
9 Sefton, and some of the material included in your  
10 brief, I think it is only fair to suggest to you  
11 that some of the matters are not within the terms of  
12 reference of this Commission to make recommendations  
13 upon directly. There is a lot of material in here  
14 with relation to the organization and arbitration  
15 during the currency of the agreement and conciliation  
16 services, bargaining in good faith, union security  
17 and those matters which can only have an indirect  
18 effect upon the recommendations of the Commission. We  
19 have no jurisdiction to consider a wholesale amendment  
20 of the Labour Relations Act, as such, but many of the  
21 matters that are raised, as we all know, sometimes are  
22 reflected in the matters that we are mainly concerned  
23 with, that is, industrial disputes.

24 MR. SEFTON: The only point I would like  
25 to make in reply to that is that sections of any  
26 act that impinge on the natural and legitimate rights  
27 of people in the province, I would think came within  
28 the jurisdiction of your Commission, and this is the  
29 point in raising this particular matter now, because  
30 of the fact that the law as it stands now is almost





1 prohibitive in its application to white collar situa-  
2 tions.

3 MR. MAHONEY: Mr. Commissioner, our Union  
4 welcomes this opportunity to appear before the Commiss-  
5 ion and submit its views on some of the matters con-  
6 tained in your terms of reference. We shall deal  
7 with those subjects that are of particular concern  
8 to us, but we shall be only too happy to obtain and  
9 provide you with any additional information that will  
10 be of assistance to you.

11 We have then set out the Union background  
12 and structure. Our International Executive Board is  
13 composed of three international officers, the district  
14 directors and the national director for Canada. These  
15 officers are nominated and elected every four years  
16 by International referendum vote held at the site of  
17 the local union. There are 29 districts in the Inter-  
18 national, of which 26 are in the United States and  
19 3 are in Canada. The district directors are nominated  
20 and elected by the members in their respective districts.  
21 The National Director of Canada is nominated and elected  
22 by referendum vote of the Canadian membership. We go  
23 on to set out where the local unions operate and it  
24 may be of particular interest to you, Mr. Commissioner,  
25 to know that all moneys coming from Canadian Steelworkers  
26 members are deposited in Canada, although they enter  
27 the United States for bookkeeping purposes. In other  
28 words, the International Union maintains a separate  
29 Canadian bank account for Canadian purposes. Each  
30 local union, of course, has its own bank account.





1                   As we have indicated there is in Canada  
2 at the present time a National Director, and a Director  
3 of each of the three Districts. District 2 covers the  
4 Atlantic Provinces; District 5, the Province of Quebec;  
5 and District 6 - our largest - covers Ontario, the  
6 Prairie Provinces and British Columbia.

7                   In addition to the International Con-  
8 vention referred to above, the Canadian locals hold a  
9 Canadian policy conference every year. At this con-  
10 ference Canadian economic and legislative policies are  
11 set. Specific contract policy is set by each local  
12 or by conferences of more than one local in the same  
13 firm or industry where we have established joint  
14 bargaining.

15                  We point out that strikes are patrolled,  
16 they must have the approval of the International  
17 President but, in Canada, the real working method is  
18 that if the Director involved approves the strike, he  
19 actually acts on behalf of the International President  
20 so that constitutional provision is, in practice,  
21 carried out by an elected Canadian officer giving  
22 that final approval.

23                  We next have a section dealing with  
24 Arbitration of Disputes arising during the life of a  
25 Collective Agreement, and I have run into some  
26 problems. I have got an infection in my eyes this  
27 morning, so I am having some trouble even following  
28 this brief, so I am going to ask Dwight Storey to go  
29 through the brief and I will be available to deal with  
30 any questions of a policy nature, but I am finding it



1 rather difficult with this eye problem.

2 MR. POLLOCK: I am glad it is not us  
3 that has caused the difficulty.

4 MR. MAHONEY: I think it is too many  
5 pills. I think the pills the doctors give you now  
6 cause more problems than they solve.

7 MR. STOREY: Mr. Commissioner and Mr.  
8 Pollock, we set out in the first section here a copy  
9 of Section 34 (1) of the Ontario Labour Relations Act  
10 dealing with Arbitration.

11 Thus, every dispute arising between  
12 labour and management during the life of a collective  
13 agreement that cannot be settled between the parties  
14 must be submitted to final and binding arbitration.  
15 The employees and the union are forbidden by law to  
16 use the strike weapon in such disputes. Our union is  
17 not opposed to this legislation, but a number of  
18 revisions are necessary in order both to make the  
19 procedure work, and to ensure justice for employees'  
20 and unions' complaints.

21 One of the major problems is the length  
22 of time it takes from the time a grievance occurs  
23 until it is resolved by a decision of an arbitration  
24 tribunal. It is not unusual for a period of six months  
25 or more to elapse from the date the grievance was  
26 lodged until an arbitration board decision is rendered.  
27 As an example of this we refer you to a case between  
28 J.C. Hallman Manufacturing Company Limited, and the  
29 United Steelworkers of America, concerning the dis-  
30 charge of one Mr. W. Wittie. The grievance arose on





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1 September 13, 1966, and although it was expedited by  
2 all parties concerned, the earliest possible date a  
3 chairman could be found and the matter heard was  
4 January 20, 1967. The Board's award was received by  
5 the union on February 2, 1967.

6 I might mention that this chairman is  
7 extremely fast at getting his awards. If we had had  
8 some other chairman, it might have been a much longer  
9 period of time.

10 (Mr. Storey continues reading brief down to "...in  
11 this province")

12 I might add that since this brief has  
13 been written, the problem has become worse because  
14 of certain changes in the Judges' Act, where now  
15 judges won't be allowed to accept Arbitration Board  
16 Chairmanship jobs.

17 THE COMMISSIONER: What is the nature of  
18 the delay, the men can't act? You had, then, quite  
19 a number.

20 MR. STOREY: The problem is, sir, that  
21 the judges, of course, have their own courts to  
22 operate Monday, Tuesday and Wednesday. It means  
23 Thursday and Friday are, basically, the only two days  
24 in the week.

25 THE COMMISSIONER: And you are limiting  
26 yourself, more or less to judges?

27 MR. STOREY: Well, that is about all we  
28 had. We couldn't get agreement on other people  
29 for various reasons, and we couldn't get other people  
30 that were prepared to act.





1 MR. POLLOCK: Just as a matter of inter  
2 Mr. Storey, in this particular grievance, when he was  
3 reinstated, was he given pay for the period of time?

4 MR. STOREY: Yes, he was.

5 MR. POLLOCK: He was fully compensated?

6 MR. STOREY: Yes, he was, less monies  
7 he had earned elsewhere, Unemployment Insurance, and  
8 so on.

9 (Mr. Storey continues reading brief from "We have  
10 reviewed some 63 Steelworkers' arbitration cases down  
11 to "...engage in illegal strikes").

12 This is the point we wish to make so  
13 that it does bring you within the terms of reference.

14 THE COMMISSIONER: Well, really, nobody  
15 is very much to blame, except the population generally  
16 is not producing a sufficient number of men who are  
17 capable of looking at questions of this type.

18 MR. STOREY: What we suggest, sir, is  
19 that if they are going to have to work under this  
20 legislation, then there is an onus on the jurisdiction  
21 within that province to provide training.

22 THE COMMISSIONER: You can choose anybody,  
23 can't you?

24 MR. STOREY: Yes, we can choose anybody  
25 who can act or has the ability to act. We just can't  
26 take anyone off the street to do this work.

27 THE COMMISSIONER: What do you suggest  
28 about increasing the number, special training?

29 MR. STOREY: As we point out further on  
30 in the brief, there was a commission under the chairman



1 ship of Mr. Eric Silk, who was then the Assistant  
2 Deputy Attorney General. Now there were a number of  
3 briefs submitted to that Commission, the Industrial  
4 Relations Institute, our union and many others. We  
5 think your Commission might take a look at these  
6 with a view to getting some other suggestions. We  
7 thought it would be too long to try to set them out  
8 in this brief.

9 (Mr. Storey continues reading brief from "Arbitration  
10 is particularly expensive" down to ... "arbitration  
11 costs")

12 I might say, Mr. Chairman and Mr. Pollock,  
13 we just saw a bill this week of a case that was held  
14 in the City of Toronto, there is no transportation  
15 involved, no out-of-town expenses, and the fee for  
16 that case for the Chairman of the Board alone was  
17 \$250.00, and it was a case that lasted some two hours.  
18 This gives you some indication of what it means to  
19 small local unions when they are involved.

20 MR. POLLOCK: Its cheaper than a strike?

21 MR. STOREY: We would hope so. Some  
22 strikes don't last very long, though. They are not  
23 so expensive.

24 (Mr. Storey continues reading brief from "We respect-  
25 fully request the Commission.... down to "....and  
26 conciliation boards"). And our question is, why  
27 not arbitration officers, it was part of the same  
28 process.

29 (Mr. Storey continues reading brief from "In no area  
30 is the arbitration..." down to "....or violate the law





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1 of the land").

2 MR. POLLOCK: Let me stop you there, Mr.  
3 Storey.

4 MR. STOREY: I thought you might.

5 MR. POLLOCK: The other/<sup>position</sup>to that taken  
6 here is that this is a negotiated agreement and, with-  
7 out going back into the history of what was traded for  
8 what it is / <sup>difficult</sup> to say what management rights exist  
9 unless you spell it out in a contract. That is the  
10 philosophy, I suppose, underlying the residual rights  
11 theory that if you want to restrict these rights you  
12 have power to do it within the framework of the  
13 collective agreement. The rub/<sup>that</sup>is that if you want  
14 any change in the agreement, you have to pay for  
15 it with some other bargain, I suppose, and if some  
16 of the matters that you are concerned with our monetary  
17 issues and some are non-monetary issues, I suspect  
18 that you would have some difficulty in persuading  
19 the membership that some theoretical aspect was more  
20 important than an increase/<sup>better</sup>wage or/fringe benefits  
21 and those sort of things. That is the problem I think  
22 you face.

23 MR. STOREY: It may not appear too  
24 important to them at the time/<sup>of</sup>negotiation, but during  
25 the life of the contract if they are hit with  
26 all losing their jobs, then you have a different  
27 problem and a completely different reaction. That  
28 is one phase of things.

29 MR. POLLOCK: It is quite a human  
30 reaction, I suppose, because it is the same, you





1       don't worry about insurance until you have had your  
2       accident?

3               MR. STOREY: Somewhat the same. The  
4       other phase of it, as my friend points out, is that  
5       in the day and age in which we live, if you look at  
6       collective agreements in 1937, for example, you see  
7       they represented 7 or 8 pages. Today, they are 50,  
8       60, 70 pages. They have become more sophisticated,  
9       the end result being that you can't foresee, particular-  
10      ly in two or three year contracts, what the future  
11      holds and the Good Lord himself couldn't negotiate  
12      and anticipate those changes, so that when matters of  
13      that kind arise, then this is where this theory gets  
14      us into real trouble.

15             MR. POLLOCK: What particular aspects  
16      are you referring to?

17             MR. STOREY: Well, I can give you a  
18      number of examples. For example, the question of  
19      contracting of work. We know of situations where the  
20      whole bargaining unit has been contracted out and  
21      people have been told to go down the street and they  
22      can hire on with the new company for 30 or 40 cents  
23      an hour less. That is one that comes to mind.

24             MR. POLLOCK: You can foresee that  
25      there might be some contracting out under our clauses  
26      and agreements ---

27             MR. STOREY: You can foresee that one,  
28      for example. You cannot see technological change. You  
29      may see it in a very vague way, but you really can't  
30      come to grips with it.



1 MR. POLLOCK: I suppose you could, being  
2 able to foresee the possibility of it, then you could  
3 possibly, I suppose, devise some procedure to be  
4 implemented when this type of technological change  
5 becomes a reality.

6 MR. STOREY: We have tried to do this in  
7 certain circumstances, but it has not really worked  
8 because we don't know how to come to grips with it,  
9 or what the problem is. That is the trouble.

10 THE COMMISSIONER: In all these 70 pages,  
11 surely in contract after contract you would have to  
12 arrive at some which would simply be repeated.

13 MR. STOREY: Yes, sir.

14 THE COMMISSIONER: What percentage of  
15 them? How many do you change? Take the existing pro-  
16 visions now. How many would you carry over as not  
17 calling for any change?

18 MR. STOREY: What I might refer to as  
19 routine clauses would remain, sir, reporting for  
20 work clause or special calling clause and, undoubtedly,  
21 when you arrive at a proper form of union security,  
22 that would be repeated, but locations change, wages  
23 change, job evaluation changes to some extent, seniority  
24 may change. It is very difficult to say what percentage  
25 would change. It would depend on the type of agreement  
26 you start out with.

27 THE COMMISSIONER: Take seniority, just  
28 as an example. What changes contract after contract  
29 would be taking place that would call for modification  
30 there?





1 MR. STOREY: Well, for example, sir,  
2 usually in your first contract, it is never as good  
3 as the third or fourth one, at least we hope not. So  
4 you might have a departmental seniority in the first  
5 contract, you might have some kind of divisional  
6 seniority in the second contract, you might have some  
7 kind of plant-wide seniority in the ensuing contract.  
8 They all make changes.

9 THE COMMISSIONER: That is quite true,  
10 but is it simply a change of judgment on your part  
11 from one to the other, or is there any corresponding  
12 change in the plant situation?

13 MR. STOREY: It is a question of provid-  
14 ing better protection for our people. Obviously,  
15 plant-wide seniority gives our membership a lot better  
16 protection from lay-off and better opportunities for  
17 promotion than departmental does.

18 MR. POLLOCK: I think probably what your  
19 answer is, is that it is not that your attitude changes,  
20 it is that the realities change in a sense that it is  
21 more practical in the third agreement to get something  
22 that you wanted in the first agreement than it is in  
23 the first agreement.

24 MR. MAHONEY: If I might give an example,  
25 right now, Dominion Tar and Chemical, which is a very  
26 widely diversified company, has agreed with a joint  
27 committee of unions that they will work towards  
28 corporation-wide seniority because they were running  
29 into an increasing number of circumstances where a  
30 plant shuts down and seniority just in that plant is of



1 no value. So, what they are trying to work out is an  
2 accomodation with the different unions that represent  
3 their people whereby corporation-wide seniority would  
4 be recognized and people would have a right to move  
5 to another operation in line with their seniority.

6 MR. STOREY: That is another phase of  
7 things we can't foresee, where a whole plant is moved  
8 from Ontario to Quebec, say, or to some other province  
9 or to some other location within the province. These  
10 are some of the residual rights things.

11 Mr. Commissioner, we set out at some  
12 length the decisions that have been made by Judge  
13 Fuller, which I am sure you are aware of, and Professor  
14 Laskin on this issue, and some reference has been made  
15 to Mr. Justice Freedman's report on the CNR Run-  
16 Throughs. We draw that to your attention. I don't  
17 think it is necessary that I read all of these.

18 In conclusion, on page 18, we have  
19 quoted from a brief that we presented to the McRuer  
20 Commission on this matter. We said this:.

21 "It is the considered opinion of this  
22 organization that the Labour Relations  
23 Act should be amended to provide that  
24 where a matter is not covered by a  
25 collective agreement, the parties must  
26 negotiate for a set number of days in  
27 an effort to settle the matter, and  
28 failing that, the matter could be  
29 referred to an Arbitration Board. This  
30 Board would have the power to look into





1 the situation, hear evidence from both  
2 parties, and then make a decision that  
3 is just and equitable to both groups.  
4 Failing such an arbitration procedure  
5 we believe that after a set period for  
6 negotiations, the employees, if they so  
7 desired, should be free to use economic  
8 action to protect their interests."

9 Just let me add a little bit to that.

10 What we are suggesting there is that the arbitrators  
11 have the authority to look into the matter and make  
12 a ruling on what the facts are as set out. Under the  
13 present procedure, the arbitrators take the position  
14 and I don't think they have any choice as far as the  
15 legislation is concerned, "Well, we have no jurisdiction  
16 to deal with this", and say something along those lines.  
17 We want to give them authority.

18 Now, this is done in the United States,  
19 I am advised, and if you read some of the arbitration  
20 decisions over there, you will find they are quite  
21 different from the very technical ones we have referred  
22 to earlier in this brief.

23 MR. POLLOCK: Do you contemplate, in  
24 this submission, then the arbitrator is faced with  
25 such an agreement that does not say anything about a  
26 particular clause, do you suggest that he ought to go  
27 back and see whether this clause was bargained out  
28 and whether somebody took something else instead of  
29 this clause, or do you say just look at the contract  
30 as it is now and think reasonably, do you think we



1 ought to be entitled to this, because that would  
2 really destroy all the negotiation aspect of give and  
3 take at the bargaining table?

4 MR. STOREY: Of course, arbitrators  
5 today won't look at what went on in negotiations.  
6 They say, "Don't bother about telling us what went on  
7 in negotiations because we don't know what you were  
8 thinking about, we don't know what you were trying to  
9 get. Maybe you got it and maybe you didn't".

10 THE COMMISSIONER: If the matter hasn't  
11 been brought up, what relevance has it?

12 MR. STOREY: I don't quite understand.

13 THE COMMISSIONER: If a matter hasn't been  
14 brought up in the course of negotiation, it becomes a  
15 new matter?

16 MR. STOREY: Precisely, and that is  
17 why we are suggesting we should be able to deal  
18 with it in that way.

19 MR. POLLOCK: What about those matters  
20 that have been brought up in negotiation, for example,  
21 contracting out. You say as one of your terms of  
22 renewal of your agreement you want a proscription on  
23 contracting out and management says, "Well, we won't  
24 agree to/<sup>not</sup>contracting out and some other things but  
25 we will give you additional supplementary unemploy-  
26 ment benefits". After bargaining back and forth, you  
27 say, "Okay we will take the additional supplementary  
28 benefits and we will leave contracting out until next  
29 year," because you don't think it is imminent that  
30 they are going to contract out. A few months later





1 they contract out, a very important issue. You go to  
2 arbitration and you say, "What about contracting out?"  
3 The arbitrator then has to look at it and say, "Well,  
4 perhaps we ought to let you have contracting out".  
5 The company would say, "No, we gave them S.U.B. for  
6 contracting out".

7 MR. STOREY: They might have given us  
8 S.U.B., but we might not have accepted it on that  
9 basis. This is the sort of thing you get into. What  
10 we are saying is that the arbitrator should look at  
11 the circumstances of the case. For instance, some of  
12 the American cases say, "Well, does the company in  
13 order to do this job have to invest another half  
14 million dollars?" And the answer has been, "No."  
15 If, on the other hand, he has people on lay-off, he  
16 has the equipment to do this work, then the arbitrators  
17 in the States have said, "Sure, the employer should  
18 do it and provide employment for his people." This is  
19 the kind of thing that we see.

20 MR. MAHONEY: I would think the point  
21 you raise is covered in our suggestion, because  
22 certainly a company could validly argue, well, it  
23 isn't just and equitable they give it because the union  
24 gave it up during negotiations and I would think it  
25 would certainly be raised before the arbitrator that  
26 it had been a factor in negotiations that was bargained  
27 away. What we are saying is, where it was not a  
28 factor and, most importantly, where it couldn't be  
29 a factor because the circumstances did not exist at  
30 the time you were negotiating, that that kind of a



1 circumstance was not too important when we had one  
2 year agreements but now with the trend towards  
3 two and three year agreements and the rapid pace of  
4 change, many things occur in a complex plant that  
5 you can't possibly foresee at the time of negotiations.  
6 So, we say in those circumstances you should not be  
7 circumscribed from having the opportunity to have  
8 justice and equity applied.

9 MR. POLLOCK: One does not have to  
10 have a very over-active imagination to contemplate an  
11 employer foreseeing this problem and saying, "All  
12 right", and he trots out a whole table full of things  
13 and says, "All right, in exchange for these we will  
14 give you these", and he has made his case.

15 MR. INGLE: If I may interrupt, Mr.  
16 Pollock, if there were such a requirement in law as  
17 we are suggesting, then there would be a whole differ-  
18 ent climate in negotiations and the parties, either  
19 one of them, would be able to do that kind of thing:  
20 They would bargain in this new atmosphere.

21 MR. POLLOCK: All right, they bargain  
22 in the new atmosphere and then there would not be any  
23 security in either of the parties as to what they had  
24 concluded because, for example, in the contracting  
25 out they may say, "Well, let us not put the contract  
26 out question before this area but in case it comes  
27 up during the currency of the agreement we can get  
28 an arbitrator's decision on it and perhaps it will  
29 be in our favour". So, the employee doesn't know  
30 what his rights are. I suppose then you say, well,





1 he ought to put the contracting out issue to a nego-  
2 tiation.

3 MR. STOREY: One of the problems we get  
4 into when we raise this question of contracting out is  
5 the employer takes the position, "Well, heck, you  
6 have had an agreement here for ten years. What have  
7 we contracted out? We have not contracted out at all".

#3 8 What happens then if the company contracts out  
9 during the life of the agreement?

10 MR. POLLOCK: I suppose then you could  
11 make that item negotiable - not the question of  
12 whether it ought to be contracted out, but again,  
13 using the power of automation of which contracting  
14 out is a type, I suppose --

15 MR. STOREY: The suggestion that it  
16 goes to arbitration, that is the only difference

17 MR. POLLOCK: Do you contemplate there  
18 would then be this type of jurisprudence, what  
19 Professor Laskin called the common law of arbitration  
20 and collective bargaining and that there would be  
21 precedents and he would have to consider all these  
22 things together?

23 MR. INGLE: That would follow.

24 MR. STOREY: I would think it would  
25 take some time but it wouldn't actually flow from  
26 this.

27 In the next section, Mr. Commissioner,  
28 we set out the problem concerning the Enforcement of  
29 Union Policy Grievances.

30 If I may, I would just summarize this.



1                               Most collective agreements provide  
2       that where there is a direct conflict between the union  
3       and the employer, or where a matter arises that affects  
4       a number of employees, <sup>during the life of an agreement</sup> /the union may lodge what is  
5       commonly known as a "policy" grievance, and the courts  
6       have held even though such clause is not in the  
7       collective agreement that it is there by virtue of  
8       the provisions of the Ontario Labour Relations Act,  
9       Arbitration Section.   We had such a case in point  
10      recently where we went through the procedures set out  
11      in the contract.   We had over 100 people involved in  
12      this particular grievance which was a safety shoe  
13      matter.   We followed the procedure in the contractor's  
14      letter, we went to arbitration and after a long delay  
15      we finally got a decision, but the decision was of  
16      such a nature that it was not of any use to us, because  
17      the company strictly took the position that you can't  
18      enforce a monetary penalty through a policy grievance  
19      and,   so, while we have gone through this very involved  
20      procedure, it cost us a great deal of money, to go  
21      out of town, we had to go back to our members and say,  
22      "Well, we won, but we didn't win." And they said, "Yes,  
23      well, what are you giving us? This doesn't make  
24      sense:   Either we won or we didn't?"   We said, "We  
25      won the battle, but we lost the war ".   Now, these  
26      people wanted to go on a wildcat strike, and we had  
27      one heck of a time trying to convince them that  
28      was not the thing to do.   We have  
29      had two or three wildcat strikes in this particular  
30      local as a result of similar problems.

We think the legislation should be





1 changed in that respect, so that where a union wins  
2 that kind of an award that the arbitrator should allow  
3 compensation to adjust the complaint.

4 MR. POLLOCK: If he can award a rein-  
5 statement with compensation, then they ought to be  
6 able to award compensation in any type of a grievance?

7 MR. STOREY: In the case I refer you to  
8 on page 13, the matter of a weaving company, <sup>this was a</sup> case where  
9 an employee was suspended and the union lodged a  
10 grievance, a policy grievance, because that particular  
11 contract provided for such a procedure. They went  
12 through a procedure, the arbitrator found he was  
13 unjustly suspended and then said, "I am sorry,  
14 gentlemen, I can't award you three days' pay", so  
15 that the griever won a great victory.

16 THE COMMISSIONER: What is the reasoning  
17 behind that? What do you mean by "policy" in that  
18 case?

19 MR. STOREY: Agreements do vary, but  
20 this agreement provided that either the company, the  
21 union or an employee could take up that particular  
22 type of grievance and, rightly or wrongly, our  
23 committee over there decided to proceed as a policy  
24 grievance.

25 THE COMMISSIONER: What was the nature  
26 of the grievance?

27 MR. STOREY: This was a three days'  
28 suspension for carelessness. The employee had  
29 damaged some goods taking them up in an elevator and  
30 it was held that it was not his fault, that it was



1 some of the machinery.

2 THE COMMISSIONER: That was the issue, in  
3 fact?

4 MR. STOREY: That was the issue, sir,  
5 and the arbitrator found the employee not guilty, but  
6 he still lost three days' pay.

7 THE COMMISSIONER: Well, what you say is,  
8 he was improperly suspended?

9 MR. STOREY: Quite so.

10 THE COMMISSIONER: And there was no  
11 factual justification for it?

12 MR. STOREY: Quite right, but then the  
13 arbitrator having found that - and I would be very  
14 happy to supply you with this case if  
15 it will be of any help - then went on to say, "I have  
16 no authority to award three days' pay".

17 THE COMMISSIONER: Under the terms of  
18 the Act?

19 MR. STOREY: Under the terms of the Act.

20 MR. POLLOCK: He could have awarded  
21 it under the ordinary grievance.

22 MR. STOREY: If the union had proceeded  
23 under an ordinary grievance he might have in those  
24 circumstances, yes.

25 THE COMMISSIONER: What do you mean by  
26 that, now? Is the making of a mistake and suspension  
27 a matter of policy?

28 MR. STOREY: I don't quite follow you  
29 there.

30 THE COMMISSIONER: How do you get policy





1 involving a matter of fact of that sort?

2 MR. STOREY: I think, perhaps, the  
3 word "policy" is confusing, Mr. Commissioner. It is  
4 a grievance lodged by the bargaining agents, if I may  
5 put it that way, rather than by the individual; in  
6 other words ---

7 THE COMMISSIONER: Why wouldn't you take  
8 it up as an individual case?

9 MR. STOREY: This employee chose not to.  
10 He was maybe fearful, I don't know, that if he did  
11 so he might be discriminated against so he said, "I  
12 pay dues to the union, you are my bargaining agency,  
13 you take it up for me".

14 THE COMMISSIONER: That, to me, is the  
15 difference between tweedle dum and tweedle dee, because  
16 the real issue is the employee; whether he takes it  
17 up himself or through an agency, what is the differ-  
18 ence?

19 MR. STOREY: That is our argument, sir,  
20 that is precisely our argument.

21 THE COMMISSIONER: You are getting back  
22 into the middle ages in your distinctions.

23 MR. STOREY: Well, we would like to get  
24 away from them.

25 Compulsory Arbitration. (Mr. Storey  
26 reads brief from "In the past few months there has  
27 been..." down to "...probably wouldnot be in business").

28 MR. POLLOCK: I suppose you / <sup>have</sup> to limit  
29 that with the provision that not only is it a  
30 question of the nature of the object, but its avail-



1 ability in the area, in the market. If everybody  
2 would agree that if there was only one car manufactured  
3 and sold at one source and that plant closed up that  
4 would be a problem, but if you can go down the  
5 street to another plant or another store or another  
6 dealer and get another car it doesn't make it essential.

7 MR. STOREY: That is right.

8 (Mr. Storey continues reading brief from "The whole  
9 idea of a third party..." down to "...is a hollow  
10 and useless thing").

11 MR. POLLOCK: Let me stop you for a  
12 minute. Of course, those people you have elected  
13 aren't free men, they don't have the right to choose  
14 their own salary. It is provided by statute, provided  
15 by some third parties.

16 MR. STOREY: As I understand, they make  
17 the law and I have heard some union members say in  
18 the last few years there has been a very substantial  
19 increase at the federal level, at least.

20 THE COMMISSIONER: Take the case of a  
21 hospital, a hospital wants nurses or anything and they  
22 say, "Now, look, this is what we consider a vital  
23 service to the community, everybody is interested. If  
24 you want to come in here we welcome you but only on  
25 one condition, that you will accept arbitration".  
26 Where is the slavery that is involved in that?

27 MR. STOREY: Well, the slavery is that  
28 we just don't have any yardsticks for arbitration  
29 for one thing.

30 THE COMMISSIONER: Let us get the





1 principle first. They say, "Here, we will welcome  
2 you, but only on one condition". When men go into  
3 the army, you know, they have not any condition at  
4 all: They go and they take what is given to them,  
5 but here we have a hospital which you and I and all  
6 of us may at times need, and we look upon that as an  
7 essential, and there is no sense in saying that in  
8 some sense everything is vital: This is vital in  
9 a special sense and the condition at the outset when  
10 you go into it is, you bind yourself by the condition  
11 of employment to accept a certain mode of determining  
12 a dispute. What is unfair in that, in any conception  
13 of democratic government?

14 MR. STOREY: Because your wages are  
15 being set by a third party without any right.

16 THE COMMISSIONER: That is what you  
17 agreed to at the outset.

18 MR. STOREY: You may agree to it because  
19 you have no other choice. If you are on the street,  
20 Mr. Commissioner, and you have got to have a job and  
21 this is the only job that is available to you, you  
22 take it.

23 THE COMMISSIONER: It isn't the only  
24 job, we have a whole field of work, you can go here,  
25 there and everywhere and you won't be bound but  
26 this is an essential industry and it requires that  
27 you bind yourself and submit to a certain determination  
28 just exactly as the policeman does, as a fireman does  
29 in these vital functions of the community.

30 MR. PARK: May I make a suggestion here?



1 I think in the case of the fireman, for example, the  
2 firemen voluntarily at the beginning in their own  
3 union constitution provide a 'no strike' provision  
4 in their constitution.

5 THE COMMISSIONER: That is what I am  
6 suggesting.

7 MR. PARK: I would suggest to you that  
8 with regard to hospital services and so on, that  
9 there is a difference of opinion within the trade union  
10 movement on this subject, one union in<sup>the</sup>field favouring  
11 compulsory arbitration and another union in the field  
12 not, but I suggest to you that the trouble you get  
13 into when you deal with a medical industry as such,  
14 of which hospitalization is part, is: is it only the  
15 worker in the hospital that is to be brought under  
16 this compulsion, or are we going to apply it to the  
17 whole industry?

18 THE COMMISSIONER: Let us settle one  
19 question at a time. I am dealing with what is  
20 acknowledged to be something of vital importance to  
21 the whole community and, assuming it is in that class,  
22 whether or not something else ought to be in that  
23 class is beside the point, but I am simply putting  
24 a case to you which I think you will agree<sup>with</sup>/that when  
25 you have a child that needs to be rushed to hospital,  
26 you ought to have somebody there to receive that child.  
27 Now, under those circumstances and you know what you  
28 are doing when you enter that service, you have agreed  
29 to abide by a decision that is based upon the community  
30 judgment that you can get fairness there. I don't





1 say anything about the degree of that, but there you  
2 have the decision that you have resorted to in the  
3 case of civil disputes. You have decision by a third  
4 person in civil disputes. The people who fill our  
5 court seats are third persons in that sense, the jury  
6 are third persons. Once upon a time, not too long ago,  
7 we would not accept the verdict of a jury. We do now.  
8 Why? Because we know sometimes we are on a jury and  
9 we act honestly, but you have to have a settlement of  
10 these things, and I think you weaken your case by  
11 saying, "We won't accept anything," notwithstanding you  
12 have agreed to do it and agreed to do it under justifiable  
13 conditions .

14 MR. PARK: I think what we are arguing  
15 about is what is the area of essential services to some  
16 extent.

17 THE COMMISSIONER: That is a different  
18 argument. I can quite agree. MR. PARK: I agree  
19 with you that the case for hospitals is probably the  
20 strongest case that could possibly be made in terms  
21 of public service and so on and, indeed, I will go  
22 further than that and say that hospital workers/<sup>who</sup>are  
23 among the most underpaid of all our workers, would  
24 probably gain in terms of economic point of view if  
25 some compulsory arbitration be conducted now. Because  
26 of their own compassion they won't strike when they  
27 have a case to strike for against hospitals.

28 THE COMMISSIONER: And I think the  
29 community is awakening to that fact.

30 MR. POLLOCK: That is a fact they are



1 experiencing, so we have heard from the building service  
2 employees union.

3 MR. STOREY: I think the record over  
4 the years indicates that. I can think of only one  
5 very short hospital strike in this province and that  
6 was down in Trenton.

7 THE COMMISSIONER: All I am suggesting  
8 is that there are situations in which the verdict of  
9 the community is that if you go there you ought to  
10 accept this, and certainly if I were advocating your  
11 case, I would admit that without any question. The  
12 classification, whether A is in that class or not is  
13 another question.

14 MR. STOREY: I suppose too, an argument  
15 can be made for the location of the hospital. A  
16 hospital that is isolated may be much more essential  
17 to that community than in a community in Toronto where  
18 you have a number of hospitals.

19 MR. POLLOCK: All very crowded, I  
20 might add.

21 MR. STOREY: All very crowded all over  
22 this country and in practically every country in the  
23 world. It seems to us that the way to approach this  
24 is not to have blanket legislation, but where a  
25 problem arises then tackle it on that basis. We  
26 object to this shotgun approach. We think the parties  
27 can work it out best of all themselves.

28 THE COMMISSIONER: In your particular  
29 case, yes. At the present stage, if you want to  
30 resist it, if you want to make a trial of strength, I





1 think the considerations are in favour of that. What  
2 objection have you to that?

3 MR. POLLOCK: I suppose the theory is that  
4 it will spread.

5 MR. STOREY: It would.

6 MR. POLLOCK: This is the point I wish to  
7 make, that it is not such a terrible thing because in  
8 many areas that are not considered essential they have  
9 agreed to compulsory arbitration. One that springs  
10 immediately to my mind is the needle trades.

11 MR. STOREY: I think that is an entirely  
12 different concept where the two parties agree to do this.

13 MR. POLLOCK: But they don't go on strike;  
14 they have somebody else to decide it and probably as  
15 they gain experience these people will have some measure  
16 or yardstick, so to speak. In all areas where compul-  
17 sory arbitration has been tried there has been satis-  
18 faction. I suppose your argument is that unless the  
19 whole area is enveloped there is nothing to refer to.

20 MR. PARK: This as a matter of fact,  
21 is a very important point because I have sat on a  
22 great many arbitration boards and conciliation boards  
23 and always the practice is to look to some of the  
24 criteria for justification for what you do.

25

26

27

28

29

30



#4 1 This means that conciliation boards even, and they are  
2 only making recommendations, with very, very few  
3 exceptions ever ---

4 and I can't think of any  
5 at the moment -- make recommendations which break new  
6 ground, as it were, in a relationship between an  
7 employer and a union, very few of them. I remember  
8 sitting on an a conciliation board which was turned  
9 into an arbitration, / with a very important chairman,  
10 in fact a chairman of great repute in the labour  
11 relations field in this country and he took the position  
12 that when we came to the union security issue it was  
13 a 99 percent union operation across the country and  
14 he came to recommending the question of a union shop  
15 for example, in that particular industry and he said  
16 that had he been a conciliator he would have recommended  
17 a union shop but as an arbitrator he would not  
18 recommend a union shop because he would then be  
19 compulsorily forcing something on them so, therefore,  
20 you have a situation whereas as an arbitrator he would  
21 not even go as far as he would go as a conciliator in  
22 the situation. I can repeat those kind of experiences  
23 with great respect, Mr. Commissioner. I think you  
24 were one of the few persons who said that an arbitrator  
25 did break / new grounds in industrial relations in this  
26 country.

27 THE COMMISSIONER: I think you will have  
28 to admit that Mr. Justice Freedman has broken some  
29 new ground .

30 MR. PARK: But only on a recommendatory



1 basis. He was not there as an arbitrator, he was there  
2 as a Royal Commissioner.

3 MR. POLLOCK: I think that what you are  
4 saying makes a point, I suppose. If you talk about the  
5 lack of criteria, if you envelop the whole area then  
6 that is a favour in point of not enveloping the whole  
7 but until you can develop some technique of criteria.---

8 THE COMMISSIONER: I foresee in the future  
9 free and  
10 through / open discussion, you would be able to  
11 anticipate your final decision where you do consent  
12 and the moment we have enough foresight and good judg-  
13 ment to anticipate what we will do when the critical  
14 moment arrives, then we can do it today. Both sides  
15 will realize how long,  
16 for instance, they can hold out. If your organization  
17 is complete on both sides you are standing there and  
18 it is a question of endurance, and you say "How long can  
19 I endure?" and he says "How long can I endure?" and  
20 at  
21 you will come, then, to a situation/which you  
22 actually meet after a long period of struggle.  
23 It involves imagination, I agree, but the anticipation  
24 can be supported by past experience.

25 MR. PARK: I would suggest to you that  
26 asked about the endurance  
27 the question/is "How long will the other guy endure?". that  
28 is the question you are really asking yourself.

29 THE COMMISSIONER: Yes, I am not limiting  
30 it in any way. I take the anticipation of the total of  
this context, your own as well as his.

MR. STOREY: Talking about it in the  
broad context, Mr. Chairman, on page 15 we have made  
the point that we feel very strongly about this. If our





1 wages are going to be set by a third party then perhaps  
2 prices have to be looked at in the same light.

3 THE COMMISSIONER: I have no doubt  
4 that they are associated as you see in England today.

5 MR. STOREY: That will bring you to the  
6 position that our friends on the other side of the  
7 table are no happier about this sort of <sup>approach</sup> / than we are.

8 THE COMMISSIONER: The only answer that I  
9 can make is it has come about out of necessity.

10 MR. STOREY: Well, perhaps so. We reviewed  
11 a number of strikes and compared the number of <sup>lost time</sup> / accidents  
12 on page 16 which is very revealing. I might read it  
13 briefly:

14 "Time loss in Canada due to injuries in  
15 1965 was about 7,000,000 man-days. This  
16 is four times the average annual time loss  
17 resulting from strikes and lockouts in  
18 the period 1961-65. When 1966 figures are  
19 compiled, it is expected time lost through  
20 injuries will be at least twice as great  
21 as time lost by strikes."

22 We have taken a look at the Australia  
23 situation and tried to analyze what goes on in North  
24 America, and we have found some difficulty, I must be  
25 very honest about it, in trying to sort the wheat from  
26 the chaff. I know the Commission was down there and  
27 gathered first-hand evidence and I am sure you are  
28 in a better position to judge that than we are.

29 THE COMMISSIONER: I might say we were  
30 well received there, which was a very interesting



1 enquiry to see how they do it in that country.

2 MR. POLLOCK: I just want to ask you one  
3 question about that. There seems to be some difference  
4 between the chart that appears on page 17 and the one  
5 that is in Appendix "C".

6 MR. INGLE: They are different, Mr.  
7 Pollock. The chart that appears on page 17 is cal-  
8 culated from the figures which appear on Appendix "C",  
9 to reduce the statistics quoted to each million members  
10 of the labour force. You see, in Appendix "C", the  
11 direct figures are given and then from those figures  
12 the calculation is made which appears on page 17. Is  
13 that clear?

14 MR. POLLOCK: Well, some of the matters,  
15 for example, on the duration of strikes in mar. days -  
16 Mr. Ingle, the figures in Appendix "C" have been con-  
17 verted so that they are in terms of accounting for each  
18 million members.

19 MR. INGLE: Yes.  
20 MR. POLLOCK: They are a rate?

21 MR. INGLE: Yes.

22 MR. POLLOCK: These are actual figures,  
23 not rates?

24 MR. INGLE: Yes.

25 MR. STOREY: I said we had some  
26 difficulty in arriving at this, the kind of information  
27 we would like to have.

28 MR. POLLOCK: I now realize that it has  
29 another factor in it.

30 MR. STOREY: As I started to say, we  
can't help but wonder on the arbitration question if





1 we ever had a guaranteed wage on that kind of thing had  
2 we had to go through arbitration, because it has been  
3 our experience that arbitration boards with one great  
4 exception generally, are inclined to look at the status  
5 quo but not go beyond it.

6 MR. POLLOCK: Of course, the only comment  
7 I can make in answer to that is that the Australian  
8 experience as far as arbitration boards are concerned  
9 is that they have got three weeks annual vacation to  
10 everybody, they have got thirteen or fourteen weeks  
11 long service leave after several years employment,  
12 they have got the 40 hour week standard --

13 MR. PARK: That might be related to the  
14 political action of the Australian labour movement.

15 MR. POLLOCK: It may very well be.

16 THE COMMISSIONER: Political action has  
17 had something to do with it and also historical events  
18 which gave rise to the emergence of a broad labour  
19 organization in the 1890's.

20 MR. STOREY: Of course, we could point  
21 out that Sweden has all these things too, without  
22 compulsory arbitration.

23 MR. POLLOCK: They have other things  
24 as well.

25 MR. STOREY: Yes, many other things,  
26 many things we would like to have in Canada.

27 MR. POLLOCK: And some we wouldn't.

28 MR. STOREY: Quite so. I am sure that  
29 some things we wouldn't like from south of the border,  
30 too.



1 Conciliation services, Mr. Chairman, I  
2 don't know that I need to read it. We have set out  
3 here three basic points, (1) that there are not  
4 enough conciliation officers to spend the amount of  
5 time required to assist the parties in reaching agree-  
6 ment. We think conciliation has been and can be of  
7 some value, but we want to see it beefed up so that  
8 there are not long delays. We set out the number of  
9 field officers on page 19 in the third paragraph.  
10 Doing our arithmetic, we have come up with 2.8 working  
11 days per conciliation officer per case and this includes  
12 travelling time. It is not unusual to have an officer  
13 go to the Lakehead one day, meet with the parties for  
14 a few hours and come back the next day, so you see  
15 it leaves him very little time to actually conciliate.  
16 We also think that these people are underpaid, this  
17 is something we have harped at and I know we have some  
18 friends in the audience behind us and we have told  
19 them that too. We think that over a long period of  
20 time these people have not been paid the kind of money  
21 that is needed to attract the calibre of person that  
22 they need and this is indicated as pointed out in the  
23 brief by the fact that every time they get some real  
24 top notch guys trained, somebody steals them, either  
25 management or labour. We think if their salaries were  
26 adjusted upward that they would be more inclined to  
27 stay with the department and provide the services that  
28 they can.

29 THE COMMISSIONER: Are they centered  
30 here?



1 MR. STOREY: Yes, they all work out of  
2 Toronto.

3 MR. POLLOCK: It would probably do more  
4 good if they would get out into the mainstream. Maybe  
5 the government is providing a public service to every-  
6 body in training people like this, reasonable people,  
7 and sending them out and letting them proselytize the  
8 people.

9 MR. STOREY: Usually industrial relations  
10 policy is not set by the lower eschelons. I don't  
11 know outside of using their personality and so on how  
12 much influence they would have.

13 THE COMMISSIONER: What would you  
14 emphasize as the factors in the personality that are  
15 most effective?

16 MR. STOREY: They are very helpful.

17 THE COMMISSIONER: What are the character-  
18 istics that you look for?

19 MR. STOREY: We look for people who know  
20 how to negotiate --

21 THE COMMISSIONER: How do they learn that?

22 MR. STOREY: They have to learn it by  
23 being trained to do it.

24 THE COMMISSIONER: Trained in actual  
25 working conditions?

26 MR. STOREY: That is one phase of it.  
27 Another phase of it, of course, is through some kind  
28 of industrial relations course. I think, as a labour  
29 movement, we do a better job of training our staff in  
30 that field than the government does in training their





1 officers.

2 THE COMMISSIONER: What do you do now  
3 actually?

4 MR. STOREY: We have a labour college  
5 that we send some of our people to for six weeks, we  
6 have weekend schools where we send our people for two  
7 or three days to concentrate on a certain subject, we  
8 have week long schools where we take our people to  
9 summer camps and focus on arbitration, for example,  
10 on collective bargaining, stewards' training and that  
11 kind of thing. So, not only do they get it on the job,  
12 Mr. Commissioner, but they get the theory which is  
13 helpful.

14 THE COMMISSIONER: Oh, no doubt, it is,  
15 yes, but I was wondering if that couldn't be expanded.

16 MR. STOREY: We are not knocking concilia-  
17 tion officers, we have a lot of good friends down there,  
18 but I know one who came into negotiations and we were  
19 dealing with a sickness and accident program and it  
20 is very common terminology to use this kind of a state-  
21 ment: "We are asking for 1, 13 and 26," meaning the  
22 insurance program will start after the first day of  
23 the accident, last for a duration of 26 weeks or 13.  
24 There are all combinations of figures and I said to  
25 the officer, he was a new man: "Do you understand  
26 what the union is asking for?" and he said, "Yes".  
27 That was at ten o'clock in the morning and at five  
28 o'clock that night he came back and said, "I am a little  
29 confused, what did you mean in that?" Now that man  
30



1 was not of much assistance to us that day. We just  
2 think it can be beefed up. That is what we are trying  
3 to say.

4 We have made some reference to conciliation  
5 boards. We must admit that since this brief has been  
6 written the picture has changed to some extent and the  
7 number of boards that are being processed are becoming  
8 fewer and fewer.

9 THE COMMISSIONER: What is your opinion  
10 of that?

11 MR. STOREY: We think basically it is  
12 good. As we have set out here in the brief, we were  
13 of the opinion that conciliation had become a crutch  
14 for both parties, that both parties knowing they would  
15 eventually end up at a conciliation board made no  
16 real effort to negotiate directly or at the officer  
17 level. We think since the department has changed this,  
18 this has happened, that one of the problems that we  
19 note with the new procedure is that neither the company  
20 nor the union are sure at the time they see the con-  
21 ciliation officer whether that is the end of the road  
22 or not, and we have had case after case with concilia-  
23 tion officers who have said to our committee, we don't  
24 know what he says to the other committee, "Well, I am  
25 not going to recommend a board", and then we react on  
26 that basis only to find a few days later that we have a  
27 letter from the Minister that he is appointing a board  
28 or it may be vice versa. We say what the conciliation  
29 officer should do is after he has examined the situation  
30 make it clear to both parties they are either going to





1 a board or they are not.

#5 2 MR. POLLOCK: I think we would learn  
3 a lesson by taking a leaf from your book.

4 MR. STOREY: Well if you know that  
5 going to negotiate you have reached the end of the road  
6 and if you desire to reach settlement you have to put  
7 your cards on the table and if you don't think you  
8 have reached the end of the road you don't put your  
9 cards on the table and, therefore, no settlement.

10 MR. POLLOCK: I suppose that was the  
11 principle behind this business of having a board  
12 or no board. If you knew the boards was coming  
13 automatically you would not, as someone has said show all  
14 your cards until you get to the ultimate stage- at <sup>the 11th.</sup> hour.  
15 Now you don't know whether there is going to be  
16 something in the morning.

17 MR. STOREY: Well, we are not sure.

18 MR. PARK: The conciliation officer will  
19 lose his usefulness on the point if he is dealing  
20 with our union, for example, and he tells me at  
21 negotiations today that he is going to recommend a  
22 no board situation and then I find myself with a  
23 board. The next time he comes around and tells me  
24 that tale, I am not going to listen to him, I am just  
25 going to say "Go peddle your fish somewhere else". I  
26 think we are entitled to know what are the circumstances  
27 we are negotiating under at that particular moment.  
28 It takes the guess work out of it altogether.

29 MR. POLLOCK: It would be better if he  
30 said nothing to you or "I don't know if I will recommend  
a board or not"



1 MR. STOREY: He sometimes says it. We  
2 don't think that is the answer and we have made this  
3 clear in the brief. We think we have to know.

4 THE COMMISSIONER: What change has taken  
5 place that has modified your view?

6 MR. STOREY: Many years ago, conciliation  
7 boards used to make recommendations, for example, and  
8 in the last five or six years they have stopped doing  
9 that.

10 THE COMMISSIONER: Recommendations for  
11 what?

12 MR. STOREY: For terms of settlement,  
13 union security, and so forth and that had been the  
14 basis for the parties to negotiate. The employees in the  
15 main objected to this procedure and over the period  
16 of time most conciliation boards no longer make  
17 recommendations as to how the dispute can be settled.  
18 One of the greatest weapons they had in our opinion  
19 in conciliation was to say/<sup>LO</sup>one party or the other that  
20 was away cut of line, "Look, Mister, you had better  
21 look where you are going. If you don't, we will write  
22 a report that will bat your ears down", but everyone  
23 knows now they are not going to write a report in most  
24 cases and so they have lost that weapon. We partic-  
25 ipated in a labour management thing in Nova Scotia  
26 and there, by mutual agreement of the companies and  
27 the unions, we reduced conciliation boards to this  
28 kind of a situation: They are only appointed now  
29 where both the company and the union want a board  
30 and we believe this works/<sup>because if people really want</sup>to conciliate, then they



1 will use the services of the board. If one party is  
2 dragged screaming to the bargaining table that is not  
3 going to do much good.

4 THE COMMISSIONER: Has that practice  
5 been more or less adopted now?

6 MR. STOREY: Yes, to some extent, except  
7 that it is not by mutual agreement: it is up to the  
8 conciliation officer to make a recommendation and the  
9 Minister of Labour either accepts that recommendation  
10 or appoints a board or refuses to appoint one, as the  
11 case may be.

12 THE COMMISSIONER: I still don't under-  
13 stand what change has been made that has changed your  
14 view.

15 MR. STOREY: The change of practice over  
16 a long period of time.

17 THE COMMISSIONER: You said you have  
18 changed the views that are expressed here.

19 MR. POLLOCK: They used to be more  
20 automatic.

21 MR. STOREY: I follow you, sorry. They  
22 used to be, and if you will look at the statistics  
23 there were something like 1,600 conciliation applications  
24 in the last year, or thereabouts, but the number of  
25 boards in 1966 was drastically reduced because the  
26 Minister of Labour used his discretion and didn't  
27 appoint so many boards. This speeded up the bargaining  
28 process.

29 THE COMMISSIONER: You would agree to  
30 that unless both parties want a board?





1 MR. STOREY: That is our position. Perhaps  
2 I should read all this but I wanted to save some time.

3 THE COMMISSIONER: You stated your  
4 change in view and I just wanted to know what it was.

5 MR. PARK: The concept of the conciliation  
6 board, I think, has changed considerably. When it was  
7 originally proposed away back in the railway situation  
8 it was supposed to be the public intervention into a  
9 dispute more or less establishing public guidelines  
10 as to what the answer to that dispute should be. Now,  
11 in fact, conciliation boards have become merely  
12 mediation boards. If they are unable to resolve the  
13 dispute they merely say they ~~have~~ been unable to resolve  
14 it and it is no guidance to anyone.

15 THE COMMISSIONER: What would you say  
16 if the board was called upon to give reasons which  
17 were made public?

18 MR. PARK: This kind of conciliation  
19 board is the original concept of a conciliation board  
20 and when that was the concept of conciliation boards  
21 we were inclined to support that as a method of dealing  
22 with the thing because I think it does do a great deal  
23 of good, I can think - it does bring pressures on the  
24 parties. I know that as a union negotiator, it has  
25 brought pressures on us on occasion when there have  
26 been public reasons given why you should or why you  
27 should not do this or that.

28 THE COMMISSIONER: It strikes me that  
29 that makes the only appeal that can be made to the  
30 public, I mean with confidence, merely the opinion



1 of a board, it is not conclusive but it certainly does  
2 something to affect or build up a public opinion.

3 MR. PARK: That is not the role though  
4 that the conciliation board now sees for itself.

5 THE COMMISSIONER: I know, but I am  
6 thinking of it as a matter of principle.

7 MR. POLLOCK: What you say is the original  
8 concept was the MacKenzie King style of board and the  
9 problem that happened was that so many boards became  
10 appointed that people stopped really caring what they  
11 reported.

12 MR. STOREY: I think that is a fact.

13 THE COMMISSIONER: I take it that on  
14 the basis of having it made public, you feel it is a  
15 policy that is desirable?

16 MR. PARK: It can be useful, very useful,  
17 but on the other hand if the present trend continues  
18 it is just a blockage on the road in its present form,  
19 that is all.

20 MR. POLLOCK: We will take ten minutes  
21 now.

22 ---Short recess.  
23

24 MR. STOREY: On page 26, we have made  
25 some reference to bargaining in good faith and we  
26 have set out the pertinent section of the Labour  
27 Relations Act which deals with that subject matter. We  
28 point out, for your information, that there have been  
29 numerous applications to the Labour Relations Board  
30 for a declaration that a company has failed to bargain





1 in good faith and we have also asked for permission to  
2 prosecute on that basis, but not one single prosecution  
3 has ever been successfully launched in the sense of a  
4 conviction being handed down. Part of the problem is  
5 defining what is meant by "bargaining in good faith",  
6 and we are very much aware of that, but we do set out  
7 in the brief a number of suggestions that we think  
8 would make for better collective bargaining. For  
9 example, one of our major problems is not knowing the  
10 financial structure of a given company and, as a result,  
11 we are always in the position of guessing as to whether  
12 they can meet our demands or not. We don't expect  
13 companies to come to us with open arms and say, "Here  
14 is a bushel full of money, cart it away fellows", but  
15 on the other hand, we don't expect them to always tell  
16 us how poor they are and that is in the main what  
17 they do. In twenty years of negotiating, I have never  
18 met an employer yet who had any money for wages. He  
19 reluctantly came up at some stage of the process, but  
20 he never admitted he was in very good collective  
21 bargaining shape.

22 MR. POLLOCK: I suppose he wants to  
23 avoid the embarrassment of <sup>being</sup> placed in the position of  
24 "Well, now, you have given us that, now let us see  
25 what we can get".

26 MR. STOREY: I think it is more than  
27 that. I think it is simply a refusal to get down and  
28 deal with the economic facts of life in many cases  
29 and in many cases where we have a company with multiple  
30 plants, we get the overall financial statement, you see,



1 but when we deal with the Kingston works, for example,  
2 and we say, "Well, you made ten million dollars last  
3 year", they say, "That is right, fellows, but not in  
4 this plant. This plant is going bankrupt, we are just  
5 barely making a couple of pennies here, we made it in  
6 the other plant." Lo and behold when we negotiate  
7 in the Toronto plant, we find, usually from a different  
8 management, that the Kingston plant was prosperous and  
9 the Toronto plant was broke. We think some factual  
10 material on profits would correct this kind of nonsense.

11 MR. POLLOCK: Do they still advance  
12 inability to pay as a major objection to payment?

13 MR. STOREY: Yes. The Steel Company of  
14 Canada does not in that sense, but lots of others do.

15 MR. POLLOCK: And they are reluctant to  
16 provide you with any kind of an objective auditor's  
17 analysis of their accounts?

18 MR. STOREY: That is right. Usually,  
19 the statement we get is that it is none of our business.

20 MR. POLLOCK: Is there any objection due to  
21 the fact that they are afraid that this information  
22 will be communicated to other sources?

23 MR. STOREY: We will be quite prepared  
24 at any time as far as this union is concerned to reach  
25 an agreement with any employer and all that he would  
26 be asked to do would be to make this financial data  
27 available to our top research consultants so that they  
28 could advise the local committee as to what the picture  
29 was. We would not care about each and every number of  
30 units.



1 MR. POLLOCK: I think you did that in  
2 one circumstance, didn't you?

3 MR. STOREY: I think we did in one or two  
4 cases, yes. In one or two cases we have had that kind  
5 of thing happen, but they have been very rare. That  
6 is one point we make on bargaining in good faith.

7 The other point we make on page 27 is  
8 the fact that many companies don't send to the bargain-  
9 ing table people who have the authority to speak on  
10 behalf of top management; in other words, in many cases  
11 they send in second string negotiators, second eschelon.  
12 The problem then becomes one of the company not being  
13 able to speak for itself because the man has not got  
14 the authority and, in most cases, he says: "No". That  
15 is the safest thing he can do. This leads to delays  
16 and frustrations and, as we point out in the brief,  
17 things that could have been settled easily six months  
18 ago become topsy turvy and get off the track and then  
19 a settlement becomes much more difficult. We think  
20 some reference to this in terms of bargaining in good  
21 faith would help overcome this problem.

22 MR. POLLOCK: Is it the initial negotiation  
23 that concerns you, or the fact that at the later stage  
24 or when you are coming close to an agreement that the  
25 people there are not able to say, "All right, that is  
26 a deal"?

27 MR. STOREY: It can be both. If we can  
28 get the top people in at the start, the chances of  
29 reaching a settlement without reference to conciliation  
30 or third-party intervention of any kind is greater.





1 MR. MAHONEY: I think a glowing example  
2 at the initial stages is where you are attempting to  
3 negotiate a pension plan and you ask the employer for  
4 statistical data that will allow you to cost a plan.  
5 We quite often run into the argument from employers,  
6 "Oh, this is just away up in the stratosphere as to  
7 costs", but when you ask them for the age breakdown  
8 of their employees, they say, "No". We think that  
9 kind of material is the proper right of the collective  
10 bargaining agency to have so that they can get their  
11 own actuaries to do a costing and you know what you  
12 are actually bargaining for. In the United States,  
13 the employer is obligated to provide that kind of  
14 information.

15 MR. POLLOCK: That is a pretty innocuous  
16 type of information anyway as far as the employer is  
17 concerned: It is not disclosing his financial picture  
18 to anybody else?

19 MR. MAHONEY: No.

20 MR. STOREY: We are not interested in  
21 disclosing it to anyone else either.

22 MR. POLLOCK: But that is his reluctance,  
23 the core of his bargaining agency moves around through-  
24 out the system.

25 MR. STOREY: In most cases this would  
26 not be of much value to anybody else other than for  
27 collective bargaining purposes.

28 MR. POLLOCK: Getting to the final stage  
29 of negotiations when the question is whether it is a  
30 deal or not a deal the objection is raised to a



1 practice of a union referring matters back to the  
2 membership for a vote. Management says, "We come and  
3 say 'Here is our deal', we are prepared to accept it  
4 and everyone shakes hands and they go back and refer  
5 to the membership and the membership sometimes reject  
6 it and sometimes the negotiating committee very strongly  
7 recommends they accept it; still they reject it and  
8 then they go back to the negotiations on a new plateau,"  
9 and although this thing probably is not an occurrence  
10 that happens every day, it is increasing in the United  
11 States in frequency and probably here and there has  
12 been some concern on management's part of disclosing  
13 your final position or making a deal on this basis  
14 because you know that if the membership rejects it  
15 they are going to be back and say, "Okay, they gave  
16 us this much now, now let us start talking a little bit  
17 longer?"

18 MR. MAHONEY: I think as you have  
19 pointed out to the C.M.A., they like to have it both  
20 ways. They say that unions should be democratic and  
21 certainly that is part of the democratic process to  
22 refer it back and I think, from the long range point of  
23 view, it has merit because it is much better to refer  
24 it back and fight it out with the membership so they  
25 eventually accept it than somebody conclude an agree-  
26 ment that may lead to wildcat strikes or sporadic  
27 strikes because I don't think you can keep people  
28 working under conditions that are imposed upon them,  
29 rather than accepted by them. So I think it is an  
30 illusion management has.





1 But the lack of education and  
2 experience is a serious handicap. It is a serious  
3 handicap for union negotiators, they have to fight  
4 with their membership and argue it out with them and  
5 convince them, but once it is done and the agreement  
6 is approved and ratified, you have got the situation  
7 settled down that you really started on their behalf.  
8 You may still have the problems but they would be  
9 illegal rather than legal.

10 MR. POLLOCK: It also comes down to  
11 collective bargaining techniques, if I may suggest it  
12 to you, that they are available to both parties.  
13 MR. MAHONEY:  
14 I have seen it used on occasion when a company will say  
15 to the negotiators privately, "We will lay on the  
16 table such and such, providing we have an understanding  
17 that it will be accepted", and on that level the  
18 negotiators go back to their membership. You have  
19 not got a formal offer on the table but you have got  
20 authorization to negotiate on that figure and you  
21 come to it in that way. It is a matter of developing  
22 a technique for handling it and I am quite sure Mr.  
23 Clawson and representatives of the C.M.A. know those  
24 techniques as well as we do.

25 MR. POLLOCK: I think those people don't  
26 have that many difficulties and I don't know whether  
27 that problem is existing in your union negotiations or  
28 not, but <sup>if</sup> the uneducated, the people who haven't got  
29 the experience in this type of thing are fixing the  
30 problems and it happened to somebody else and they  
are afraid of it and then they say, "Well, that is



1 liable to happen to me, so I had better prepare, I  
2 won't give them my best offer", and that only adds  
3 fuel to the fire because then when they do reject it  
4 he will give them some more and then it is back and  
5 forth and you never get any finality in negotiations.

MR. STOREY:

6 I think this has been a major problem in our union  
7 and most unions in this country. We have had the odd  
8 situation where this same thing has happened with  
9 management. Most memorandums of agreement provide  
10 for ratification by the principals of both parties  
11 and we have had the odd situation where the managing  
12 directors come back and say, "I am sorry, gentlemen,  
13 the Board of Directors have rejected my suggestion  
14 and we have to start all over again".

15 THE COMMISSIONER: Has that occurred as  
16 frequently as the reverse case?

17 MR. STOREY: I don't think as frequently  
18 in all honesty. We don't really have figures on this  
19 kind of thing but we know from our experience.

20 MR. MAHONEY: The nature of the two  
21 institutions is so different that it is much less  
22 frequent because the lines of authority within the  
23 management structure are more clear cut and concise  
24 than they are within the union structure.

25 MR. STOREY: We have set out certain  
26 recommendations which the Commissioner is aware of,  
27 which we think will correct this situation.

28 The next item is Union Security and I  
29 feel somewhat like carrying coals to Newcastle on this,  
30 so I am not going to read it. Suffice to say that we



1 have set out some of our experiences concerning this  
2 problem over the last few years and we believe that  
3 the lack of security in this province has led to a  
4 number of problems. In Mr. Ingle's submission to the  
5 Commission, you will see that that becomes more apparent.  
6 We suggest that this province should come into the  
7 20th Century in this particular field and enact a form  
8 of security, something along the line of the Rand  
9 Formula, as a matter of legislation. We say it to you  
10 not because we don't think that is a valid proposition,  
11 but I think it is fair to say if one proposition is  
12 a problem you should look at another one, and we are  
13 suggesting if you can't bring in the loose shop in  
14 the legislation concerning the first agreement, it  
15 should follow automatically in the second agreement and  
16 we point out, Mr. Commissioner, that that would give  
17 the employees an opportunity to assess the value of  
18 their union, its officers and if they didn't like it  
19 under the Labour Relations Act they would have an  
20 opportunity to kick it out and have no union or to  
21 select a union. So, it gives them in large measure  
22 freedom. I don't think I need say any more than this,  
23 because, as I say, you know the arguments and problems  
24 as well as I.

25 MR. POLLOCK: There aren't too many  
26 jurisdictions by your definition in the 20th Century.

27 MR. STOREY: Well, at least they are  
28 part way there, I will say this. As you know, there  
29 is absolutely no provision for union security of any  
30 sort in this province. Keep in mind that some of these





1 other jurisdictions started in this field in 1926 and  
2 thereabouts, and this is 1967, so we are quite a ways  
3 behind.

4 MR. PARK: There is the added argument,  
5 of course, that in certain areas in Ontario there are  
6 in fact, arrangements in legislation both in certain  
7 farm acts with respect to earnings and the teachers,  
8 for example, are protected in terms of their actions  
9 by legislation on the payment of dues and so forth.  
10 We are not even suggesting the breaking of new ground  
11 but in Canada the only provinces that don't have it --  
12 Quebec now has a union security provision, I don't  
13 believe New Brunswick has, Manitoba doesn't, Saskatchew-  
14 an has, Alberta has, British Columbia has.

15 THE COMMISSIONER: Nova Scotia has  
16 something.

17 MR. PARK: Nova Scotia is the first, I  
18 think - and Prince Edward Island has and Newfoundland  
19 has. They borrowed their legislation largely from  
20 Nova Scotia.

21 MR. POLLOCK: I don't think anybody has  
22 gone as far in Canada and even in the United States  
23 as Saskatchewan did.

24 MR. STOREY: That is correct.

25 MR. POLLOCK: They have modified that  
26 slightly now, recently, as far as conscientious  
27 objectors are concerned or something, whatever those  
28 are.

29 THE COMMISSIONER: This was quite active  
30 a few years ago in the United States. Many refused to



1 join a union because of religion or other reasons, and  
2 they had devised several modes of meeting the situation  
3 either by contributing to charity or something like that.  
4 I was just wondering how it has developed.

5 MR. STOREY: I think it is still used  
6 down there.

7 MR. MAHONEY: In our experience it is  
8 quite common in certain states where the union shop is  
9 not legal.

10 MR. POLLOCK: The analogy it draws to the  
11 government, it has been suggested to it in some cases  
12 in some organizations that have been certified for  
13 some twenty or thirty years, there ought to be something  
14 that is call a recertification vote. What do you think  
15 of that aspect? Give everybody now in the plant an  
16 opportunity to again say whether they want the union  
17 or whether they don't want the union.

18 MR. STOREY: I don't think it is necessary  
19 at all under our legislation, because the last two  
20 months of any collective agreement the employees can  
21 very easily get such a vote by simply putting their  
22 John Henry's on the petition, and I can say with some  
23 degree of experience that a lot of employees do this.  
24 I sat on the Board, as you know, for two years, and I  
25 saw petitions come in on the cardboard that goes to bind  
26 a white shirt when they send it to the laundry. That  
27 is how loose it is. They don't have any kind of a  
28 formal document. All they have to do is say, "We  
29 oppose the union" and get some signatures and witnesses  
30 and turn up at the Board. They don't need counsel so





1 it is very easy for them to get such a vote if they  
2 indeed want it.

3 MR. POLLOCK: You have to go around and  
4 start getting those people together.

5 MR. STOREY: Oh, yes, if the sentiment  
6 is there you will get it pretty easily.

7 MR. POLLOCK: A lot of people, and this  
8 is probably from your own experience, will vote on  
9 something rather than put their name on a public  
10 document.

11 MR. STOREY: If we are going to use that  
12 argument, I make the simple suggestion to you that the  
13 same applies for applications for certification. We  
14 have to go around and collect a heck of a lot more  
15 documentation. They have to have cards and they have  
16 to be dated and they have to be witnessed and we have  
17 to have the dollar and we can't loan the dollar and  
18 we can't promise it back; in other words, to get a  
19 union there are a great deal many more restrictions  
20 than there is to get rid of one, so my answer to your  
21 question is --

22 MR. POLLOCK: In a government analogy  
23 you would have to carry it forward and say, "All right,  
24 we have to have the government elected and then any  
25 group of people who want to get rid of the government  
26 would have to collect a number of names".

27 MR. STOREY: I don't think you can draw  
28 the comparison.

29 MR. POLLOCK: In relation to tax, would  
30 you be content if legislation existed saying that where



1 the union acted for this section of the Act which puts  
2 in agency shop or the Rand Formula or whatever it is,  
3 that one of the conditions/<sup>be</sup>that in five years or some-  
4 thing like that, there ought to be a vote conducted to  
5 see whether they still hold the support of the member-  
6 ship that, perhaps, in some cases was taken when these  
7 people were not even born?

8 MR. STOREY: That is a possibility and  
9 this will always be true as our industrial relations  
10 get more mature, but it seems to me that the answer  
11 to your question is not in a new certification vote,  
12 but in a vote as to whether the employees want union  
13 security after five years, if you want to go that far.  
14 You note the experience in the United States where they  
15 had the Taft-Hartley Union Shop elections. They  
16 didn't prove very much and I suspect your suggestion  
17 would meet with the same reaction here that if we were  
18 going to deal with union security then I think we should  
19 deal with it on that basis rather than certification.

20 MR. INGLE: The other thing, Mr. Pollock,  
21 is you mentioned that if they wanted to have a vote  
22 they would have to sign a public document. This, as  
23 you know, is not a public document. The Board goes  
24 to great lengths to protect the names of the people  
25 from disclosure to anybody except the Board, just as  
26 they do with respect to union membership.

27 MR. POLLOCK: But as this petition, this  
28 shirt cardboard circulates itself around the plant,  
29 other people who may not hold that same view see it.

30 MR. STOREY: They may or may not see it.



1 They may know it is circulating and they may be asked  
2 to sign it, but it is not necessary that they see it.

3 MR. POLLOCK: They may see it?

4 MR. STOREY: They may see it, yes.

5 MR. POLLOCK: There is certainly greater  
6 publicity than in the case where an agency comes in  
7 and says, "All right everybody, into the ballot box  
8 and cast your vote", and nobody knows whether he is  
9 there or not, it is all automatic?

10 MR. STOREY: I think it depends who the  
11 organizer is really.

12 I think perhaps at this stage I would  
13 like to ask Mr. Ingle to speak.

14 MR. INGLE: Mr. Commissioner, we are  
15 commencing now, at page 36 of the brief, on some of  
16 the legal aspects, particularly of injunctions, strikes  
17 and picketting.

18 The right of workers to engage in  
19 collective bargaining has long been recognized in  
20 Canada, but we feel that the law has not kept pace with  
21 that development in that there are anomalies, contra-  
22 dictions and restrictions with respect to the exercising  
23 of the right to engage in collective bargaining and we  
24 propose to set out some of those for your consideration.

25 As Professor Carrothers has noted, there  
26 are three basic freedoms involved in collective  
27 bargaining for employees - freedom to form unions,  
28 the freedom to require employees to engage in collective  
29 bargaining with those unions and finally, the freedom  
30 to invoke meaningful economic sanctions in support of





1 collective bargaining.

2 (Mr. Ingle reads brief from "The principal sanction  
3 employees have" to"....during World War II". By law,  
4 in Ontario, the right has been taken away from employees  
5 at all times, except in two situations, that is, where  
6 a group of employees is duly organized in a union, the  
7 union has been certified by the Labour Relations Board  
8 and the conciliation process under the Act has been  
9 complied with. The other time is when the collective  
10 agreement has expired and again the conciliation pro-  
11 cedures have been completed and then again, the employees  
12 may exercise a right to strike. In all other situations  
13 and at all other times the employee's right to strike  
14 has been taken away and, thus, it appears to people in  
15 the trade union movement that the legislature and the  
16 law, as enacted by the legislature, has already inter-  
17 vened on the side of the employer by restricting the  
18 rights of the employees so far as when they may go on  
19 strike is concerned. In a competitive economy, compe-  
20 tition necessarily results in some of the competitors  
21 being injured. The law as it has developed over the  
22 years has taken due cognizance of this fact and has  
23 endeavoured to treat competing interests equally and  
24 fairly.

25 MR. POLLOCK: Well do you feel that is  
26 a healthy legislation, the Ontario Labour Relations  
27 Act?



1 MR. INGLE: Well, if I may say so, with  
2 that  
3 respect, sir, we don't feel/it is as vital as a reading  
4 of the legislation appears to be, but as my colleague  
5 pointed out the requirement in the legislation that  
6 employers bargain with their employees or a  
7 certified union  
8 recognizing those employees cannot really in most cases be  
9 effectively enforced. The unions have applied many  
10 times to the Labour Relations Board to prosecute  
11 employers for failure to bargain in good faith. In  
12 no case that we know of has that right been successfully  
13 prosecuted.

14 THE COMMISSIONER: But look/<sup>at</sup>the number  
15 of agreements which you execute during the course  
16 of a year.

17 MR. INGLE: This is true.

18 THE COMMISSIONER: They are under the  
19 compulsion of law. You can work out certain modes of  
20 conduct of accepting / <sup>it</sup> or rejecting it. It may be  
21 that you have difficulty in persuading the Board one  
22 way or the other but still the obligation remains  
23 and he is <sup>prevented from closing</sup> / his doors in the meantime.

24 MR. INGLE: The obligation on the  
25 employer to bargain is, we suggest, not as effectively  
26 enforced by means of sanctions in the legislation as  
27 the injunction against the trade union in preventing  
28 them from going on strike.

29 THE COMMISSIONER: But the prohibition  
30 against closing his doors is just the same.

MR. INGLE: Yes, that is true. I think,





1 however, that in practice if the employer's prerogative  
2 of closing his door, of locking out his employees is  
3 not as meaningful a kind of weapon in his hands --

4 MR. POLLOCK: It depends on the economics  
5 of the situation, high economy or low economy.

6 MR. INGLE: That is right.

7 MR. POLLOCK: High employment or low  
8 employment?

9 MR. INGLE: That is right. In any  
10 event, we have the impression of the two sides in a  
11 collective bargaining situation. One of the principal  
12 complaints of the union movement is that both in the  
13 substantive and in the procedural law the law appears  
14 to favour the employer's rather than the employee's  
15 side, and the question of injunctions is particularly  
16 important in this connection. The use of injunctions  
17 in labour disputes is almost universally applied in  
18 support of only one of the competing interests, that  
19 is, in support of the employer's position and the  
20 courts have, from time to time, said the use of  
21 injunctions is available equally to both sides in a  
22 dispute and, theoretically, this is true, but as we  
23 have pointed out, we think that the equality suggested  
24 here is more apparent than real.

25 In the study of injunctions which was  
26 made, I understand, before / the Commission, it is quite  
27 apparent there that there are only three instances  
28 where injunctions were applied for on behalf of the  
29 unions and on all three of those cases the motions were  
30 dismissed, I think properly so, when one looks at the



1 cases. It is very difficult to conceive of a situation  
2 where an injunction would be an appropriate remedy for  
3 use by employees or unions in a labour dispute, so that  
4 the assertion, in our opinion, that injunctions are  
5 equally available to both sides is, to some extent, a  
6 legal fiction.

7 MR. POLLOCK: Let me stop you there  
8 for a moment. It occurs to me that if there is going  
9 to be some action open to the employer that would be  
10 equivalent to the type of communication of information  
11 that injunctions are involved with, the picketing  
12 aspect, that his picketing or his demonstration would  
13 be against the union in the sense that "This is a bad  
14 union, don't join this union, stay away from them,  
15 or I'll picket your organizational attempts". This  
16 type of picketing is proscribed in the legislation.  
17 He can't interfere in that sense except under the  
18 employer free speech bit. I don't know what that  
19 means, mind you, but the legislation prohibits him  
20 from actively going out and saying to his employees,  
21 "Don't join this union, it is a bad union, they are  
22 thugs", and all these other things that only employers  
23 can think of.

24 MR. INGLE: We are talking, perhaps, Mr.  
25 Pollock, of two different situations, aren't we?

26 MR. POLLOCK: We are talking about two  
27 situations on which the livelihood of one organization  
28 depends. You are picketing this plant in an economic  
29 sense to keep this man's profits down and affect the  
30 purpose of his existence, to make profits.



1 MR. INGLE: Yes.

2 MR. POLLOCK: He is conversely trying to  
3 keep you out of his plant which is your job to get in  
4 and help his employees. So he is affecting you in  
5 your purpose and you are affecting him in his purpose.

6 MR. INGLE: If we are talking about a  
7 labour dispute in the sense of a strike, there is  
8 nothing that I know of in the legislation that prevents  
9 the employer from taking advertisements in the news-  
10 paper, taking broadcasts on the radio and on television  
11 and, indeed, employers have done this to state his  
12 case fully and to communicate directly with the  
13 employees by means of letters. Almost all of the kinds  
14 or ways in which he would like to persuade his employees  
15 to return to work to end their strike are open to him,  
16 but the principal weapon that the employees have, the  
17 picket line, is subject to the use of an injunction.

18 MR. POLLOCK: I would suggest that if  
19 there was not a prohibition as there exists in some  
20 cases, the absence of prohibition of employer inter-  
21 ference, that that would be a comparable remedy that  
22 the union could seek an injunction for, to prevent  
23 this employer from interfering with the legitimate  
24 recognized activities of the union.

25 MR. INGLE: In theory, perhaps, Mr.  
26 Pollock, this is so. I can't conceive of a specific  
27 instance where this has been used. You think of a  
28 given factual situation and I just can't conceive of  
29 a set of facts where the injunction would be an  
30 appropriate remedy for the union.





1 MR. POLLOCK: Well, if you knock / out  
2 the unfair labour practices that exist, there would  
3 be perfect remedies. All you are saying is that  
4 because the unfair labour practices have moved in and  
5 have given us a remedy to protect us against some of  
6 these abuses, we no longer have to look at the  
7 injunction. That is a different argument.

8 MR. INGLE: It seems to me if you remove  
9 the unfair labour practices sections from the Act, you  
10 could not substitute for those sections the remedy of  
11 an injunction on the part of the employees.

12 MR. POLLOCK: If you didn't provide any  
13 enforcement procedure you most certainly could.

14 THE COMMISSIONER: Don't you think you  
15 have to look at it in another way? What this Act  
16 has done and what your practice has done has been to  
17 assail what you might call a citadel that was founded  
18 originally in the ordinary rights of property, and  
19 you are eating away at that, properly - and I am not  
20 criticizing you at all, I think it is a good idea  
21 but that, in fact, is what is being done - you are  
22 assailing that fortified position.

23 MR. INGLE: Yes.

24 THE COMMISSIONER: And the question in  
25 law is: How far will your right to invade that be  
26 permitted in the interest of general security?

27 MR. INGLE: This, sir, is the question  
28 which we deal with in the next few sections of our  
29 brief.

30 THE COMMISSIONER: That is the situation.



1 Now, courts have been criticized, but really the question  
2 is not for the courts; the question is one for the  
3 legislature, and that is why we can talk about it freely  
4 here.

5 MR. INGLE: I agree one hundred percent,  
6 sir. The courts are obligated to act within the frame-  
7 work of the legislation as provided to them, and it is  
8 a legislative change which we here are basically seeking.

9 MR. POLLOCK: Before we turn to the  
10 meatier portion of that discussion, I would like to  
11 know your view and you don't raise it in the brief,  
12 on the present interpretation of Section 54 (2) of the  
13 Labour Relations Act which seems to say that until  
14 you have been entitled to have conciliation proceedings  
15 applicable to you, you can't strike, so that somebody  
16 who is unorganized, with no collective agreement, can't  
17 strike?

18 MR. INGLE: That is right.

19 MR. POLLOCK: Is that a good thing or  
20 a bad thing?

21 MR. INGLE: In my opinion, sir, that is  
22 a bad thing. I think employees should have - this is  
23 my own personal opinion and not necessarily the opinion  
24 of the union - but I believe that this kind of restrict-  
25 ion should be removed.

26 MR. POLLOCK: I appreciate that comment,  
27 because I don't think you have probably had an oppor-  
28 tunity to discuss it with the people in the union to  
29 obtain their opinion, but some people have said, maybe  
30 facetiously, that it is a good thing for unions because





1 if people want to strike they have to get certified,  
2 they have to join a union.

3 MR. INGLE: Yes.

4 MR. POLLOCK: Maybe they can mull this  
5 over in the collective mind of the union and let us  
6 know.

7 MR. INGLE: I know there are differences  
8 of opinion about this kind of thing as there are  
9 differences of opinion as to whether or not unions  
10 should be able to go on strike during the life of an  
11 agreement. There is at least one jurisdiction in this  
12 country where it is open to unions to go on strike  
13 during the life of an agreement, and it is my observa-  
14 tion that there is no greater degree of labour diffi-  
15 culty and disputes and strikes in that jurisdiction  
16 than there is in all the other jurisdictions where  
17 such strikes are prohibited during the life of the  
18 agreement.

19 MR. POLLOCK: But in Saskatchewan, they  
20 have written into a lot of agreements ---

21 MR. INGLE: Yes, it is written in  
22 voluntarily by the parties, as Mr. Storey reminds me,  
23 as they have in the United States.

24 THE COMMISSIONER: Well, really, don't  
25 you think you place a great deal of store in free dis-  
26 cussion, you say collective bargaining. Well, why  
27 shouldn't that collective bargaining be carried on as  
28 a civilized means of settling these things in the  
29 absence of any external influences which amount, in  
30 effect, to a threat?



1 MR. INGLE: I think, sir, that, basically,  
2 this is the position of the majority of the trade union  
3 movement, quite so. All I am pointing out is that the  
4 right of trade unions - perhaps this is a good thing -  
5 to go on strike has already been severely restricted  
6 and what we are saying is that in view of that, the use  
7 of injunctions in labour disputes available as they are  
8 in practice, really only to one side is an additional  
9 invasion of what is, I think, a fundamental right of  
10 the employee.

11 THE COMMISSIONER: Just let me put a  
12 question to you. It was given before us yesterday:  
13 here was a case where there was a strike and there  
14 were two or three furnaces which were very valuable,  
15 their value ran into the millions of dollars, and the  
16 strikers refused to allow anybody to enter that plant  
17 to put them into condition where they would not be  
18 destroyed. Now, you have to act quickly, you have to  
19 act within short hours. How else can you act, unless  
20 you are met face to face with two armies, one trying to  
21 force its way in and the other trying to prevent them?  
22 And the reason for the prevention is, really, in the  
23 existing law illegal, an illegal act of prohibition,  
24 "We won't allow you to enter the plant". Now, those  
25 are the conditions. You can't get rid of  
26 some mode of action which can't be delayed.

27 MR. INGLE: I agree with you, sir. We  
28 deal with this later on in our brief. I think in  
29 many jurisdictions in the United States they have  
30 solved precisely that problem without resort to



1 injunctions in every case.

2 THE COMMISSIONER: Well, if they made  
3 provision in law, yes, but in the absence of legislation  
4 I don't see any other alternative than the injunction.

5  
6 MR. PARK : In Canada, for instance,  
7 where this same situation would occur in the basic  
8 steel companies, all negotiations would cooperate.  
9 I think, it has never been necessary to resort to an  
10 injunction to protect that type of equipment. The  
11 common sense of the employees and the fact that if  
12 those furnaces are employed they have no livelihood  
13 is much more potent than an injunction.

14 THE COMMISSIONER: I quite agree, but  
15 it is a fact that this actually took place. I  
16 am not imagining this. This was told us as a fact

17 MR. MAHONEY: I am rather astounded  
18 because in our experience it has never happened.

19 MR. POLLOCK: I think as far as the  
20 comment that was made, Mr. Commissioner, it was in  
21 relation to unsanctioned activity, the union officials  
22 had tried in vain to get people in to bank these  
23 furnaces or whatever they do to furnaces these days,  
24 and some people felt that this was their right to stop  
25 them, keep them out. I think somewhere in the other  
26 submission you point out an occasion where that type  
27 of activity is, a mistaken activity, is taken as a  
28 legitimate one.

29 THE COMMISSIONER: Take the case that  
30 occurred in Windsor, where the strikers refused to





1 allow anybody to go in to maintain fires, as a  
2 result of which I think they suffered damage of  
3 \$200,000 in frozen pipes, burst pipes. Now, those  
4 are emergency things and I think we would all agree  
5 that they are absurd, that you have got to preserve  
6 the thing that both interests look to, it is common  
7 sense, but these things sometimes do happen.

8 Now, so far as the procedure is concerned,  
9 I don't think there is much doubt now that at least  
10 one proper thing to do would be to do away with so-  
11 called affidavits and bring whoever is going to be  
12 used as a witness before the court, so that he can  
13 be seen by anybody and so far as notice is concerned,  
14 it will be given. Now, it won't be long, because they  
15 have to act quickly but if it is given at all so to  
16 have a representative there and so to bring these re-  
17 presentatives before the court, the judge of which  
18 will have to weigh their evidence and demand clear  
19 evidence of the danger, I think the difficulty is  
20 removed.

21 MR. MAHONEY: I think, Mr. Commissioner,  
22 that the great concern in the labour movement over in-  
23 junctions is more the misuse of injunctions than cases  
24 like you cite where there is the real emergency. They  
25 are very infrequently the case where injunctions are  
26 used. It is where they are used <sup>where</sup> / those circumstances  
27 do not prevail that brings them into ill repute with  
28 the labour movement.

29 THE COMMISSIONER: Well, the difficulty  
30 is that sometimes the affidavits setting forth the



1 facts on the face of them are sufficient for action:  
2 they come within the requirements of the provisions  
3 of the Judicature Act. Now in the absence of any  
4 challenge to that, that is all the court has to act  
5 on. It is quite true that this emergency order has  
6 a limit of four days, and it is said that that is the  
7 critical time, but the remarkable thing is that in no  
8 case that has been brought to our attention has any  
9 effort been made to challenge the facts set forth in  
10 the affidavits. That could be done, you know, on an  
11 application to continue that injunction and it seems  
12 to me if it could be shown that the facts were mis-  
13 stated or misrepresented or distorted, there would  
14 be every reason why a permanent and interim injunction  
15 would be refused.

16 MR. INGLE: May I say, sir, that I had  
17 a case last summer - and I have supplied details of  
18 this to the Commission in one of the case histories  
19 that we have submitted - where precisely that happened.  
20 The factual situation described by the employer in  
21 the affidavit he filed in the court was quite incorrect,  
22 and we were able to file before the hearing in weekly  
23 court took place, affidavits on/behalf which stated  
24 a totally different set of facts.

25 MR. POLLOCK: Is that the affidavits by  
26 police?

27 MR. INGLE: No, not that case, that is  
28 another one which I was not involved in at all, but  
29 that is another example. That is not within my  
30 personal experience, but in the case I am citing,





1 counsel for the employer just would not go on with the  
2 case: he just withdrew it. There was no injunction  
3 granted.

4 THE COMMISSIONER: As you suggested, I  
5 would make all parties go before the court, your own  
6 as well as the company's.

7 MR. INGLE: I am very glad to hear you  
8 say that, sir. That is one of the representations we  
9 make in the brief.

10 THE COMMISSIONER: That, to me, is only  
11 good sense.

12 MR. INGLE: I am <sup>if</sup> sure/you have a great  
13 deal of experience with this as we who have been  
14 practicing in labour law in Ontario have, this is  
15 one of the major complaints about procedure. I would  
16 not like to dwell upon it in view of what you have  
17 said, sir.

18 May I turn to the question of mass  
19 picketing. We may not be in as much accord on this subject

20 MR. POLLOCK: The process of negotiation  
21 we have given you something, now you have to give us  
22 something.

23 MR. INGLE: Frequently, it has been my  
24 experience that injunctions are granted either en-  
25 joining picketing completely or at least very severely  
26 restricting the number of pickets wherever it can be  
27 established that mass picketing has occurred. Many  
28 judges apparently feel that mass picketing in itself  
29 creates a situation which may lead to property damage,  
30 violence or other incidents on a picket line and







1 on the picket line, what is demonstrated in the eyes  
2 of both the employees and the general public is not  
3 the strength, but the weakness of the union and the  
4 union's position. What is demonstrated is its apparent  
5 lack of support among the employees, and that solidarity  
6 and strength of the striking employees at the early  
7 stages of a strike can often best be demonstrated by  
8 picketing in large numbers without any violence,  
9 obstruction, injury or trespassing, and so on. In  
10 the case histories which we have submitted separately  
11 to the Commission, some mass picketing is shown to have  
12 taken place in about a third of the cases and we have  
13 here for these terms, arbitrarily defined "mass  
14 picketing" as something involving more than 25 people.  
15 I suppose one could draw the line almost anywhere,  
16 but we thought that was a reasonable place at which  
17 to draw it. Of the 34 cases where mass picketing  
18 in those terms occurred, only in 4 cases was there at  
19 any time any property damage, violence or other  
20 illegal act of that kind. In 6 other cases, incidents  
21 have taken place on the picket line, I think clearly  
22 illegal incidents, where there was no mass picketing  
23 and so we conclude that it is apparent, at least  
24 apparently there is not that great degree of correlation  
25 between the mass picketing and illegal acts.

26 MR. POLLOCK: How many of those 24 cases,  
27 I assume that is the figure you get from 4 and 6 - oh  
28 no, 6 are outside the mass picketing, so it is 30  
29 cases of mass picketing without any of these  
30 activities?





1 MR. INGLE: Yes.

2 MR. POLLOCK: How many of those were  
3 injunctions granted in?

4 MR. INGLE: I am not certain, Mr.  
5 Pollock. I will have to look them up. We have given  
6 you the references in detail there. I can look that  
7 up and give it to you separately. I am not certain.  
8 Certainly, in some of them, I recall that in some  
9 cases there were.

10 THE COMMISSIONER: I might say that  
11 the affidavits will have to be shown to the court  
12 either a breach of the peace, injury to the person  
13 or damage to property has occurred, more an interruption  
14 of an essential service.

15 MR. INGLE: "Is likely to occur".

16 THE COMMISSIONER: "Has occurred or is  
17 likely to occur". Of course, that is limited to an  
18 essential public service.

19 MR. INGLE: I appreciate that, sir, and  
20 that is Section 17 of the Judicature Act.

21 MR. POLLOCK: That is for an ex parte  
22 application.

23 MR. INGLE: Yes. I have tried unsucces-  
24 fully in many cases to argue exactly the point you are  
25 now making and the injunction has been granted never-  
26 the less, in spite of the fact that I think there is  
27 no basis in Section 17 for it. This is one of the  
28 complaints we have.

29 THE COMMISSIONER: You mean just on the  
30 basis of mass?



1 MR. INGLE: Yes, sir.

2 THE COMMISSIONER: Well, you are going  
3 to let us see what your experience has been?

4 MR. INGLE: I will supply those cases to  
5 the Commission.

6 MR. POLLOCK: That restriction only  
7 applies to ex parte injunctions?

8 MR. INGLE: The restriction in Section  
9 17?

10 MR. POLLOCK: Yes. It says, "An interim  
11 injunction under Sub-section (2) may be granted ex parte"  
12 where these things have happened.

13 MR. INGLE: That is right.

14 MR. POLLOCK: So you could on notice  
15 get them on broader circumstances.

16 MR. INGLE: That is right, you are quite  
17 right, I stand corrected.

18 Well, we conclude therefore, Mr.  
19 Commissioner, that the legislation should provide that  
20 in the absence of any unlawful act such as the kinds  
21 of things we have been talking about, that no injunction  
22 should be granted to restrict the number of pickets  
23 in the absence of any illegality.

24 So much for mass picketing. I now turn  
25 to the question of ---

26 MR. POLLOCK: Let me understand that.  
27 You would be content, I suppose, on that argument,  
28 that if you could demonstrate any of these unlawful  
29 acts to enjoin the mass picketing on the basis if  
30 somebody says, "Well, if you have a large number of





1 people that is a kind of a smoke screen and includes  
2 these activities", that you would have to establish  
3 some other obstruction or some violence or some damage  
4 to property in addition to the mass picketing?

5 MR. INGLE: That is right.

6 MR. POLLOCK: And then you could say,  
7 "All right then, we are going to limit the pickets to  
8 two or three"?

9 MR. INGLE: Yes.

10 Now, with respect to ---

11 MR. POLLOCK: Just carrying that through,  
12 I wonder if you could provide us with a list of those  
13 things that you think ought to be included, if there  
14 is such a statute drafted, saying, "These are the  
15 things that are necessary to ground an injunction"?

16 MR. INGLE: Well, of course, this is a  
17 second alternative. Our first alternative is, we  
18 don't like injunctions at all.

19 MR. POLLOCK: Right, that goes without  
20 saying.

21 MR. INGLE: If we must have injunctions  
22 and you think this is one of the restrictions that  
23 should be placed upon their use and some of the obvious  
24 things, of course, are the ones we have been discussing  
25 and I suppose it is the question of a person's ingenuity  
26 as to what one thinks <sup>up.</sup> / Certainly, the kind of thing  
27 the Commissioner mentioned a moment ago would go on  
28 the list. I don't know how many others.

29 MR. POLLOCK: Well, it wouldn't go on  
30 the list unless there was obstruction.



1 MR. INGLE: I want to now deal with the  
2 question of strikebreakers.

3 (Mr. Ingle reads brief from "when col-  
4 lective bargaining" down to "continue to work.")

5 MR. POLLOCK: Would you contemplate any  
6 action by the union of a disciplinary nature for people  
7 who do not respect the solidarity of the union?

8 MR. INGLE: You are talking about inter-  
9 nal union discipline?

10 MR. POLLOCK: Yes. If you respect the  
11 right of the employer to persuade these people to go  
12 back to work then the corollary of that is you have  
13 got to respect the right of the employees and members  
14 of your union to be persuaded back and if they have  
15 made up their minds there won't be any recriminations.

16 MR. PARK: I think you have got to look  
17 at this in a broader context. If I may paraphrase  
18 the situation of the essential services the Commission-  
19 er used, if an employee who is a member of the union  
20 knows as a member of the union that this is a condition  
21 of his membership and that he might face sanctions  
22 from the union for certain misdemeanours then under  
23 that condition I would think it would be a slightly  
24 different situation than if that were not the case.

25  
26  
27 ---

28  
29 ---  
30



1 MR. POLLOCK: There aren't too many  
2 union constitutions that don't provide for that type  
3 of thing, are there? MR. PARK:  
4 In my experience,  
5 I would think what would happen in a specific situation  
6 is that it would be the degree of the strength of the  
7 local union and the degree to which the strike break-  
8 ing took place and so on and so forth. I think it  
9 would be the pattern of the strike as it got settled  
10 in the end.

11 MR. POLLOCK: I suppose what you are  
12 saying there is that if the majority of the union  
13 went back to work you couldn't suspend the majority  
14 of the union?

15 MR. PARK: That is right.

16 MR. POLLOCK: But if two or three people  
17 were legitimately persuaded as you would give the  
18 right to the employer to persuade to go back, then  
19 you say, "All right, he can persuade you but if you  
20 go back you will have to answer to us"?

21 MR. PARK: Yes, "If he can persuade  
22 you then you have to live within the framework of the  
23 rules that you accept when you became a member of the  
24 union."

25 MR. INGLE: Well, may I go on, then, to  
26 deal with the hiring of new employees which is, in  
27 our opinion, a somewhat different situation. Employees,  
28 even when they are on strike, have, with some justifica-  
29 tion, a feeling that the job which they left in the  
30 plant when they commenced to strike, in a sense, belongs  
to them. They have left this job, but they still feel





1 some right to that job.

2 THE COMMISSIONER: I would just like to  
3 ask you: What do you think about the conception -  
4 I don't know whether you mentioned it - that they are  
5 selling something, they are selling labour as a  
6 commodity? If that is so, I don't think your talking  
7 about a personal relationship to the judge is on very  
8 sound ground.

9 MR. INGLE: I don't particularly like  
10 that terminology.

11 MR. POLLOCK: Well, whoever wrote  
12 the first 40 pages of your brief did.

13 MR. INGLE: No, with respect, I suggest  
14 that that is not the case.

15 MR. STOREY: It is in the earlier sections  
16 of the brief but it has become a well-known term in  
17 dealing with this kind of thing. I would agree with  
18 my colleague, I am not necessarily married to it, but  
19 it is in some of the semantics that have grown up in  
20 this field of endeavour and is used in that sense.

21 MR. POLLOCK: I think the Commissioner's  
22 point is that if you want to argue one thing you ought  
23 to be consistent all the way through and not fall into  
24 a semantic trap. Don't be anti-semantic.

25 MR. INGLE: Well, in any event, what we  
26 are saying here is that it is one thing for an employer  
27 to try to persuade his own employees to come back to  
28 work or not to go on strike; it is quite another for  
29 him to take people from the outside/and, indeed, the  
30 Labour Relations Act protects the jobs to some limited



1 extent of the people who comply with the Act and who go  
2 out on strike. The Supreme Court of Canada has  
3 specifically held that the right of employees, the  
4 limited right of employees to their job when they  
5 are on strike is properly something that should be  
6 protected.

7 MR. POLLOCK: I wonder if you could  
8 expand on that, if I could interrupt you at that stage?  
9 What does that section do in your mind, what does it  
10 mean? Let me read it for the record:

11 "For the purposes of this Act, no person  
12 shall be deemed to have ceased to be  
13 an employee by reason only of his ceasing  
14 to work for his employer as the result  
15 of their lock-out or strike, or by  
16 reason only of his being dismissed by an  
17 employer contrary to this Act or to a  
18 collective agreement".

19 MR. INGLE: Well, all of the rights which  
20 an employee has within the framework of this act con-  
21 tinue while he is on strike and in the Royal York Hotel  
22 case, which is the one that we have cited, the employer  
23 sent the people who were on strike notices that they  
24 were being dismissed and the court, as I recall the  
25 case, held that their employment could not be termina-  
26 ted simply because they were on strike.

27 THE COMMISSIONER: Did they use that  
28 expression?

29 MR. STOREY: They told them, as I recall  
30 it, Mr. Commissioner, that if they were not back to





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1 work by a certain date that their employment was  
2 terminated.

3 THE COMMISSIONER: That is what they said,  
4 but it was not very clear if they were purporting to  
5 dismiss them at that time or go through what was  
6 conceived, I think, as a termination, but in either  
7 case it would be in contradiction really to 1 (2).  
8 I don't think that you have put the emphasis on that  
9 in the past that you might have.

10 MR. INGLE: Perhaps we haven't.

11 THE COMMISSIONER: I think it is a very  
12 vital provision.

13 MR. INGLE: Yes, I agree with you.

14 MR. POLLOCK: Do you think it would be  
15 open to the employer to argue that replacing an  
16 employee who was on strike and saying, "I am not  
17 dismissing you because you are on strike, I am telling  
18 you that I no longer need you anymore because I have  
19 filled your position with somebody else," the job is  
20 no longer open ?

21 MR. INGLE: Well, that is one step farther.

22 THE COMMISSIONER: That would make a  
23 mockery of the provision.

24 MR. STOREY: Isn't that, in effect, what  
25 they did in the Royal York thing in the final  
26 analysis?

27 MR. POLLOCK: The Royal York case didn't  
28 go far enough to open up that section.

29 MR. STOREY: And the court case came  
30 before we got to the stage you mentioned, as I recall it,



1 but if my memory is correct, what the employer said  
2 in the final stages of the negotiation was, "You have  
3 been replaced and if and when work is available for  
4 you we will take you back", and they set out certain  
5 times when certain employees had to return to work.  
6 That is basically what you are saying.

7 THE COMMISSIONER: That seems to be the  
8 case, but it was never challenged, this question of  
9 the maintenance of the relation insofar as I can see  
10 has never been challenged. Of course, to maintain  
11 that relationship, you maintain seniority. It is  
12 all involved in the contractual relation as an employee.

13 MR. INGLE: Well, of course, his seniority  
14 is not protected under the Act, is it?

15 THE COMMISSIONER: Well, what do you mean  
16 by saying his relation as an employee, what is included  
17 in the word "relation"?

18 MR. INGLE: Well, everything that is  
19 covered by the Act, every right that he has under the  
20 Act as an employee is protected. THE COMMISSIONER:  
21 Well, the Act  
22 contemplates an agreement which is effective, which will  
23 be in force. The agreement provides for seniority.

24 MR. INGLE: If they are on a legitimate  
25 strike, sir, and the agreement has ended.

26 THE COMMISSIONER: I think it is too  
27 narrow a view to say that for the purposes of this Act  
28 when the Act uses the expression "the contractual  
29 relation is maintained", what is the contract of  
30 employment - that is the real question, what does it  
embody?



1 MR. INGLE: Yes, as Mr. Storey reminds  
2 me, all we are really suggesting is --

3 THE COMMISSIONER: Well, I was just trying  
4 to find out how you viewed it, because it seemed to me that it  
5 is a very vital question because in England if you  
6 struck without giving notice of termination in the  
7 strict sense, you were guilty of an unlawful act.

8 MR. INGLE: Yes.

9 THE COMMISSIONER: But here, you are not  
10 guilty at all, you are acting in the light of a right  
11 which the statute creates, that you cease to work, but  
12 it doesn't affect the continuance of your relation to  
13 the employment.

14 MR. INGLE: Quite right.

15 Well, we certainly agree that this is a  
16 very important right that employees have, particularly  
17 on strike situations.

18 MR. POLLOCK: We would be obliged if you  
19 would amplify that.

20 MR. INGLE: I don't know how much more  
21 one can amplify it, Mr. Pollock. We have no guidance  
22 from the courts, other than the Royal York case, as  
23 to how far that would go.

24 THE COMMISSIONER: Well, you have this,  
25 that here is a statute that is passed for the amelior-  
26 ation of conditions between management and labour, and  
27 I would say that under your Interpretation Act, that  
28 must receive a broad, liberal interpretation.

29 MR. INGLE: Yes. I don't know, if I may  
30 say so with respect, sir, that one could carry that





1 over into the rights of employees under collective  
2 agreements, though. They might be in disagreement on  
3 that because I don't see how that could be done because  
4 if the employee is striking when there is a collective  
5 agreement in force then it is an illegal strike  
6 and Sub-section (2) does not apply.

7 MR. POLLOCK: That is right.

8 THE COMMISSIONER: What was that again?

9 MR. INGLE: I was saying, sir, that if  
10 an employee who was covered by a collective agreement is  
11 on strike, it must, by definition, be an illegal strike.

12 THE COMMISSIONER: Why, of course, but  
13 what is the relevance of that to this?

14 MR. INGLE: Then, I take it it is only  
15 legal strikes that are covered by Sub-section (2).

16 THE COMMISSIONER: Exactly, that is what  
17 I am assuming.

18 MR. POLLOCK: And your position is that  
19 the only time you can have a legal strike is after the  
20 contract has expired?

21 MR. INGLE: Right.

22 MR. POLLOCK: And then all the provisions  
23 of the contract are now dead and can only be revived  
24 by subsequent negotiation and making them retroactive?

25 MR. INGLE: Yes.

26 THE COMMISSIONER: Then what do you think  
27 the relation is between the employee and the employer  
28 in the light of that section? On that view, he has no  
29 employee relation at all.

30 MR. INGLE: Oh, I think so, sir.



1 THE COMMISSIONER: Well, what is it? If  
2 the agreement is no longer in existence, what is it?

3 MR. INGLE: He has the protection that  
4 is specified <sup>within</sup> / the Act.

5 THE COMMISSIONER: But it says he continues  
6 as an employee.

7 MR. INGLE: The word "employee" though,  
8 is the definition that is used throughout the Act.

9 THE COMMISSIONER: "No person shall be  
10 deemed to have ceased to be an employee". Now, what is  
11 an employee, is it a man who has no relation at all  
12 to his employer?

13 MR. INGLE: It has a limited meaning  
14 under the Act.

15 MR. POLLOCK: Are you saying that that  
16 means that wherever "employee" is used throughout the  
17 Act insofar as unfair practices are concerned and these  
18 other things that he is still an employee for those  
19 purposes?

20 MR. INGLE: That is right.

21 MR. POLLOCK: Is it your opinion that  
22 it is really a definition section?

23 MR. INGLE: No.

24 THE COMMISSIONER: Well, we need not  
25 argue with it anymore, but I am thinking if I had been  
26 engaged to contest that, I would not have had any  
27 hesitation in doing so.

28 MR. POLLOCK: You may not have won.

29 THE COMMISSIONER: It is not a question  
30 of winning at all: It is a question of <sup>the</sup> / asserting of





1 a view and supporting it.

2 MR. INGLE: Well, the context in which  
3 this question arose was that we are contending here  
4 that where an employer goes outside of his regular  
5 work force in a strike situation and hires what we  
6 might term third party strike breakers, then he is  
7 taking away from the striking employees whatever rights  
8 as employees, in whatever terms those are defined, he  
9 is taking away to some extent whatever property rights  
10 they may have in their jobs, if one could use the  
11 term "property rights". Even more important, perhaps,  
12 is the emotional situation that the strike breaking  
13 of that kind creates on the picket line. It is one thing  
14 when some of their own colleagues go back to work.  
15 but when they see outsiders coming along to take their  
16 jobs, it is quite another.

17 THE COMMISSIONER: There is no doubt at  
18 all about the emotional reaction.

19 MR. INGLE: Therefore, it is our respect-  
20 ful submission that where a group of employees and their  
21 union is complying with the requirements of the Labour  
22 Relations Act, and have completed the required concilia-  
23 tion procedures so that it is a lawful walk-out  
24 who employers/are retaining their right to persuade striking  
25 should be prohibited from as strike breakers,  
26 employees to return / hiring new employees /and it  
27 is our contention that the hiring of third party strike  
28 breakers should at least be protected in every case  
29 where an injunction is granted that either restricts  
30 or totally prohibits picketing. Such a prohibition  
would be in keeping with the theory that one of the



1 legitimate objects of picketing is to persuade strike  
2 breakers not to enter the struck premises and if the  
3 striking employee are by a court order forbidden to  
4 exercise their right to persuade the strike breakers  
5 to stay/<sup>on</sup>then it would only be the quid pro quo  
6 that the same injunction order should prohibit the employer  
7 on the other side from hiring the strike breakers. One  
8 of the purposes of the interim injunction theory is to  
9 preserve the status quo between the parties and the  
10 requirement that we have suggested would assist in  
11 accomplishing that.

12 THE COMMISSIONER: I must say, I think the  
13 answer to that is very clear. No injunction prevents  
14 normal persuasion if the people whom you try to persuade  
15 are willing to listen to you but you can't compel them  
16 to do it, you can't stop them and those things which  
17 are prohibited by an injunction are not directed against  
18 an act alone of attempting to convey information or  
19 persuasion. You can argue this, on the face of the  
20 document.<sup>it</sup> The employment, is fulfilled, it is complete.  
21 The complement of men by the preservation of the other  
22 employees who go on strike, the complement is complete  
23 and you are really adding to your staff unnecessarily  
24 and I would argue with or without success that that  
25 very fact is a support to the contention that you are  
26 raising now, that you should not pack your employment  
27 with people who have really no place there.

28 MR. INGLE: One might extend your con-  
29 tention, sir, to this, that the very action of an  
30 employer in hiring a strike breaker, as you say, to add



1 to the complement is violating Sub-section (2) of  
2 Section 1.

3 THE COMMISSIONER: Certainly, that is an  
4 arguable position to take.

5 MR. INGLE: I think you are quite right,  
6 sir, that this can be contended in the light of the  
7 examined case.

8 I will just summarize the section dealing  
9 with Ex Parte Injunctions.

10 MR. POLLOCK: Before you get to that, I  
11 would like to talk for a little bit about the balancing  
12 of the economic situation between somebody who is on  
13 strike and the methods they can use to proceed with that  
14 strike and those available to the employer, on the other  
15 hand, to combat the strike. Would this be a convenient  
16 point to do that?

17 MR. INGLE: I suppose so, yes.

18 MR. POLLOCK: The question I want to know  
19 is, if the employer says, "All right, you are going on  
20 strike, you aren't satisfied with the work conditions  
21 that I am prepared to offer to you, that is your right.  
22 I ought to have the same right to test the reasonableness  
23 of your demand against the market place, and if I can  
24 get people to work with the same skills that I am  
25 satisfied to hire at conditions that I am prepared to  
26 offer to you and they will take it, why can't I employ  
27 them?"

28 MR. INGLE: I don't think that this  
29 course should be open to the employer.

30 MR. POLLOCK: What is the weakness in





1 his argument?

2 MR. PARK: May I make a suggestion? One  
3 of the weaknesses in his argument is this, I think, or  
4 the weakness in the proposition is that over the months  
5 that have preceded the strike he has had the protection  
6 of the Labour Relations Act and the prevention of a  
7 strike to deal with his employees who are members of  
8 his union. He has had all that period of time in which  
9 to negotiate with a group of people which is identifiable  
10 and so on, and the Act assumes that the responsibilities  
11 go in both directions in that. Then, what he can do at  
12 the moment is, having exhausted the protection he has  
13 under the Act, he then attempts to get a new group of  
14 employees who are, in fact, not represented by the  
15 bargaining agency which he is required to deal with.

16 MR. POLLOCK: They are represented by  
17 the bargaining agency, they are certified for the  
18 union, if they come into the union you still bargain on  
19 their behalf?

20 MR. PARK: Yes, this is true, you still  
21 bargain for the whole group, but he is now replacing  
22 them with the object in the long run, presumably of  
23 getting rid of the union.

24 MR. POLLOCK: That is an object you  
25 might impute to it, but for this purpose let us not  
26 do that. Let us say all he is doing is saying - and  
27 it works out in experience - that if he can't get  
28 people to work under the conditions that you are prepared  
29 to work for, the strike is over and he is satisfied and  
30 you come back to work on the terms you have asked for.



1 All he is saying is, "The only check of reasonableness  
2 I have on the demands that are made upon me, the objective  
3 realities are the market place issues. Can I get some-  
4 body at \$2.20 instead of \$2.50?"

5 MR. STOREY: But he doesn't always do  
6 this.

7 MR. POLLOCK: I don't quarrel with this,  
8 I think if there is an economic question then they can't  
9 go out of the area and say, "All right, defeat the  
10 strike, defeat the union, I am going to pay 50 cents  
11 an hour more for that purpose."

12 MR. STOREY: They can even do that. Let  
13 us look at the B.A. Clarkson strike a couple of years  
14 ago where the company imported nothing but supervisors.

15 MR. POLLOCK: That could be classified  
16 as a technical technique. That was technical, to defeat  
17 the union.

18 MR. STOREY: And they paid more to the  
19 supervisors for doing the work than the other people  
20 refused to do it for.

21 MR. POLLOCK: I am not arguing on that  
22 aspect, I think you are on stronger ground. I am  
23 talking about a fellow who is in a small place where  
24 there are a group of people who go on strike and he  
25 can, as a realistic factor, they want \$2.00 an hour,  
26 he can get people with the same skills available in  
27 other places in this community for \$1.50 and he says,  
28 "Your demand is unreasonable", and the proof of the  
29 proof that it is unreasonable is that he can get these  
30 people.





1 MR. STOREY: Let us take the Tilco  
2 thing which I know something of in terms of this kind  
3 of thing. This employer was able to attract into that  
4 plant of his a lot of people who didn't have jobs  
5 elsewhere. They worked there three or four weeks, they  
6 have left. We have had problems with them coming into  
7 some of our plants because they would not continue to  
8 work, they have tried it out, they didn't know what the  
9 conditions were and when they found out what they were  
10 they said, "Let us get the heck out of here".

11 MR. POLLOCK: Perhaps that is true and  
12 that is exactly what he is going to suffer from. If  
13 he has got bad conditions he is going to have a complete  
14 labour turnover and his production is going to be very  
15 poor, he is not going to make any money, you have  
16 defeated him economically or he has defeated himself  
17 economically. The lessons that you learn over a long  
18 period of time are the lessons that last longest.

19 THE COMMISSIONER: It is not an economic  
20 question at all. He has the liberty, and I mean by  
21 "liberty" there is nothing to prevent him in our laws,  
22 he has the liberty of going out and making arrangements  
23 with others, just as you have the liberty of trying to  
24 persuade and to inform. They are two liberties because  
25 they are not forbidden by any law. How can you say that  
26 one is any more important than the other when they are  
27 not in conflict?

28 MR. STOREY: Admittedly, they are not  
29 forbidden by any law that exists at the moment. What  
30 we are doing here is suggesting how the law should be



1 changed.

2 THE COMMISSIONER: But you are urging  
3 that one liberty should be restrained and the other  
4 untouched?

5 MR. INGLE: No, I don't think so, sir.

6 THE COMMISSIONER: You say that the  
7 liberty to go out and talk to other people, persuade  
8 them to come in / ought to be prevented, but your persuasion  
9 for them to stay out is legal?

10 MR. INGLE: If I may say so, with respect,  
11 we are only suggesting that this restriction should be  
12 applied if there is an injunction which prohibits or  
13 restricts the right of the trade union to persuade them.  
14 Then we think the quid pro quo of that is that the  
15 employer should be restricted also.

16 THE COMMISSIONER: The only answer, I  
17 think, that can be given - and it can be answered - is  
18 that you are never restrained from doing legalized work  
19 or a legalized action: you are restrained from doing  
20 illegal actions and, therefore, you are at liberty to  
21 inform and persuade as he is at liberty to go out and  
22 hail a man on the street and say, "Come in and work for  
23 me".

24 MR. INGLE: Oh, yes, the injunction order  
25 must be based on a legal right and we are suggesting  
26 that that legal right perhaps should be spelled out in  
27 labour legislation.

28 MR. POLLOCK: The strength of the argument,  
29 if we can just return to it for a moment, and the  
30 strength of the strike was that the conditions here are



1 so terrible nobody would work for him and if you went  
2 out nobody would come out and work for him because they  
3 were so bad. Now, because there is a greater disparity,  
4 some jobs are better than others, and there is becoming  
5 a disparity between one plant and another plant. In the  
6 old days, all plants were abominable. Now there is a  
7 choice within the working force to go in there and say,  
8 "Well, I am doing this job for \$1.50, I would rather do  
9 it for \$2.20".

10 MR. INGLE: I think that one of the  
11 results of the suggestion you are now putting forward,  
12 Mr. Pollock, would be that the whole wage level would  
13 be brought down to the lowest denominator, wouldn't it?

14 MR. POLLOCK: You would if you were  
15 operating in a theoretical situation with complete  
16 labour mobility and people floating around.

17 THE COMMISSIONER: That only has to do  
18 with the conditions that repel them from coming in or  
19 the conditions that attract them to come in. That has  
20 nothing to do with the liberty of persuasion or  
21 compelling. It doesn't make a particle of difference  
22 about the economics. I don't, at the moment, look upon  
23 that as a vital element in the situation at all: It  
24 is the right to engage, the right to go out and talk  
25 on the part of the employer, just as it is on the part  
26 of the employee.

27 MR. INGLE: What we are suggesting is,  
28 if the right of the employee to go out and persuade is  
29 restricted, then the right of the employer should be  
30 similarly restricted.





1                   We have advocated in the next section of  
2 our brief for the reasons set out there that Ex Parte  
3 Injunctions should be abolished. I don't propose to go  
4 into this in detail. I am sure that the reasons why  
5 ex parte injunctions are an unjust kind of procedure are  
6 well-known and the dangers involved/granting ex parte  
7 injunctions, particularly when affidavit evidence is  
8 used and perhaps it is necessarily used, I don't know.  
9 It seems to me that no great harm would be done if the  
10 notice were required in every case, if necessary under  
11 a real short notice, a matter of hours if it is an  
12 emergency of the kind the Commissioner referred to,  
13 that notice can be given and we think that in the light  
14 of that and in the light of the dangers that there are  
15 where only one side is heard, that the argument for the  
16 abolition of ex parte injunctions by requiring notice  
17 in every case albeit, short notice, is almost unanswer-  
18 able.

19                   The next section of our brief deals with  
20 the question of The Appropriate Forum. This commences  
21 on page 49. We have suggested in this section of our  
22 brief that perhaps the courts are not the best  
23 forum in respect of the granting of injunctions for the  
24 reasons that we have set out there. Unfortunately we are  
25 advised that it would be unconstitutional to give author-  
26 ity over the issuance of injunctions to the Labour Rela-  
27 tions Board. We have suggested for your consideration  
28 the proposition that perhaps before an interim injunction  
29 is issued, as in the situation we have been talking  
30 about that the Labour Relations Board be required to give



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1 permission before an injunction be sought in the same  
2 way that now - -

3 THE COMMISSIONER: Do you really think it  
4 would be appropriate to allow a subordinate tribunal of  
5 that sort to permit the Supreme Court to issue an in-  
6 junction?

7 MR. INGLE: Well sir, this is done - - -

8 THE COMMISSIONER: I quite understand the  
9 constitutional difficulty. This Board may be able to  
10 make orders to abstain or cease and desist and one  
11 thing and another but to say that they have to give  
12 permission to go to the Supreme Court would be really  
13 a sort of contradiction of the whole attitude. I call  
14 this to your attention.

15 MR. INGLE: Mr. Storey was telling us of  
16 the difficulty they are having now of getting judges  
17 to act as arbitrators - -

18 THE COMMISSIONER: And how busy they are  
19 and the delays in making their awards.

20 MR. STOREY: They have certainly handled  
21 many cases but some of them are not familiar with  
22 the situation.

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1 THE COMMISSIONER: Well, you won't have  
2 that man twice?

3 MR. STOREY: Sometimes you have no choice  
4 in this business.

5 THE COMMISSIONER: But it seems to me  
6 that it is a significant thing. Now, that is what  
7 such a man is trained to do, to see both sides of  
8 questions or more than two if there are many. Really,  
9 it repels one, the idea that the Labour Board is going  
10 to give permission for you to go to the Supreme Court.

11 MR. INGLE: Well, sir, let me suggest  
12 to you --

13 THE COMMISSIONER: I know, they get  
14 permission to prosecute.

15 MR. INGLE: They get permission now  
16 before they go to court to prosecute.

17 THE COMMISSIONER: That prosecution  
18 would be in an inferior court?

19 MR. INGLE: My understanding of the  
20 situation in the United States is that private parties  
21 do not seek the injunction: It is the Labour Relations  
22 Board which is the applicant for the injunction.

23 MR. POLLOCK: They don't face the juris-  
24 dictional problem of constitution.

25 MR. INGLE: That is true, we have a  
26 different problem here.

27 MR. POLLOCK: The parallel would be if  
28 you could do it would be to have applications to the  
29 Labour Relations Board to seek an injunction on your  
30 behalf, or on your own motion.



1 MR. INGLE: If that could be done, that  
2 would be perhaps preferable than the kind of thing that  
3 we have suggested. In our opinion, there are many  
4 situations where we feel that the particular court, the  
5 particular judge may not have the knowledge and exper-  
6 ience in labour relations which enables him fully to  
7 appreciate the kind of situation in which the application  
8 for an injunction is being made and that a body that  
9 was trained and had its experience wholly in this field  
10 might be more appropriate. We have endeavoured to  
11 suggest one way in which that could be done.

12 THE COMMISSIONER: I was just noticing,  
13 offences under this Act are prosecuted before summary  
14 conviction courts.

15 MR. INGLE: That is true, sir, they go  
16 directly to the magistrate's courts so the analogy, I  
17 admit, is a faulty one. It is our experience - and I  
18 hope I am not saying anything in a disparaging way here,  
19 but it is a fact that the difficulty with respect to  
20 injunctions which is criticized so much by the trade  
21 union movement arises from the granting of injunctions,  
22 not so much by the members of the Supreme Court of this  
23 province who have had a lot of experience and are capable  
24 and knowledgeable men, but by the county and district  
25 court judges who, perhaps, in particular situations,  
26 have not got the experience and training that the members  
27 of the Supreme Court have. I think it is true to say  
28 that most of the difficulties with which we find fault  
29 arise out of the injunctions that are issued by the  
30 lower courts, rather than in the cases of the high courts.



1 MR. POLLOCK: The county courts, rather  
2 than the Supreme Court?

3 MR. INGLE: Yes. I don't know whether  
4 this is borne out in Professor Krever's study or not.  
5 I was hoping when I knew the study was taking place that  
6 this kind of breakdown might be given, particularly  
7 so far as ex parte injunctions are concerned, but in  
8 the reading I have done of the study, I don't see this  
9 kind of a breakdown in there.

10 MR. POLLOCK: I think the general report  
11 is more or less based on Supreme Court judges' cases  
12 that have later been continued in a county. The  
13 problem with an ex parte application, as you know, is  
14 that there are very seldom many papers filed and left.

15 MR. INGLE: Yes.

16 MR. POLLOCK: But the general experience  
17 in the province is that the vast majority of injunct-  
18 ions are granted in the Supreme Court, initially, and  
19 of course they have to be continued there, not on the  
20 local level of the county judge.

21 MR. INGLE: That, I take it, is a statistic  
22 which is not available to us here. It surprises me  
23 somewhat, because I would have thought just from  
24 observation that the contrary was true, that if this  
25 kind of study has been made ---

26 MR. POLLOCK: I think the introduction  
27 shows that rather than any kind of a statistical analysis  
28 or breakdown.

29 MR. INGLE: Perhaps I can discuss that  
30 with you.





1                   In view, Mr. Commissioner, of the things  
2 which you said earlier with respect to procedures, I  
3 don't intend to spend any time on that section of our  
4 brief at all, unless there are questions arising out of  
5 our presentation, because I think the Commissioner, in  
6 the few remarks he made earlier today, has dealt with  
7 most of the important things of which we have been  
8 critical here, the use of affidavit evidence and the  
9 desirability of having witnesses come in to open court  
10 and all that kind of thing. There is no use wasting our  
11 time on that.

12                   MR. POLLOCK: Are you saying that with  
13 a look to your watch and saying you can be finished  
14 fairly shortly?

15                   MR. INGLE: Well, partly.

16                   MR. POLLOCK: Because if you are going  
17 to be any length of time, if you can finish in the next  
18 couple of minutes, we will adjourn the hearing, and I  
19 will also adjourn some material that I want to question  
20 about these cases to another time, it doesn't make any  
21 difference.

22                   MR. INGLE: I have just consulted my  
23 colleagues and I think perhaps that we should ask that  
24 we adjourn.

25                   MR. POLLOCK: All right, 2:15.

26 ---At 1:00 P.M., the hearing adjourned until 2:15.  
27  
28  
29  
30



1 ---On resuming at 2:15 P.M.

2  
3 MR. POLLOCK: I take it from the remarks  
4 made on adjournment that we are now on page 56 of the  
5 brief, Recommendations concerning Injunctions?

6 MR. INGLE: Yes, and perhaps I could  
7 just go over these and then answer any questions you  
8 have. To summarize the recommendations that we have  
9 made respecting injunctions, in the first place, so far  
10 as injunctions are concerned, we would prefer, of  
11 course, that the use of injunctions in labour disputes  
12 be abolished altogether. However, if the Commission  
13 feels that a recommendation along those lines cannot  
14 be made, then we have made certain other suggestions,  
15 first of all, that no injunction respecting the number  
16 of pickets should be granted unless there have been  
17 unlawful acts of the kind that we have discussed  
18 committed in connection with picketing; secondly, that  
19 the hiring of strike breakers should either be totally  
20 prohibited or, alternately, any injunction granted should  
21 contain a provision restricting the right of the employer  
22 to hire strike breakers. We have, again, suggested that  
23 ex parte injunctions should be abolished completely and  
24 that no injunction should be granted without the prior  
25 consent of the Labour Relations Board.

26 Now, so far as procedure is concerned,  
27 we have gone heavily on the provisions in the Norris-  
28 LaGuardia Act, first, we suggest that no injunction  
29 should be granted in a labour dispute unless viva voce  
30 evidence has been given in open court, subject to cross-





1 examination, establishing to the satisfaction of the  
2 court some five different things which we have summar-  
3 ized on page 56:

4 (a) unlawful acts have been threatened  
5 and will be committed unless restrained,

6 (b) substantial and irreparable injury  
7 to the plaintiff's property will follow,

8 (c) as to each item of relief granted,  
9 greater injury will be inflicted upon the plaintiff by  
10 the denial of relief than will be inflicted upon the  
11 defendants by the granting of the relief,

12 (d) the plaintiff has no adequate  
13 remedy at law, and

14 (e) the public officers charged with  
15 the duty to protect the plaintiff's property are unable  
16 or unwilling to furnish adequate protection.

17 Now, we suggest, with respect, that if  
18 the Commission could see its way clear to make recommend-  
19 ations along these lines, our problems with injunctions  
20 indeed it seems to me, that the whole problem, either  
21 ours or the employers in this jurisdiction would be  
22 largely solved.

23 MR. POLLOCK: Are you suggesting that  
24 all of these items have to exist or any of them?

25 MR. INGLE: No, that all of them exist.

26 MR. POLLOCK: In each case?

27 MR. INGLE: Yes. I think this is the  
28 provision in the Norris-LaGuardia Act that there is  
29 not a question of any of them being in existence, they  
30 must be established to the court's satisfaction in each



1 case.

2 MR. POLLOCK: Of course, you have to  
3 take the Norris-LaGuardia Act in the total aspect of  
4 all the other labour legislation as<sup>it</sup> is modified. You  
5 can't say that these are the provisions that govern in  
6 the United States because there have been considerable  
7 modifying provisions in both the legislation of 1947  
8 and legislation in 1959.

9 MR. INGLE: Yes.

10 THE COMMISSIONER: Have those modifications  
11 been by way of amendment to that Act?

12 MR. INGLE: No, they have been added.

13 MR. POLLOCK: They have been explicit  
14 in prohibiting certain other types of conduct that  
15 would normally have been prohibited by injunction if  
16 that had been the case?

17 MR. INGLE: Yes, and the Labour Relations  
18 Board have been required, or at least have been given  
19 the authority to seek injunctions of the courts in  
20 certain cases and they have been required to seek them  
21 in other cases. There is both a permissive and a  
22 mandatory provision, as I understand the legislation,  
23 (I regret I don't have it with me), with respect to the  
24 rules that govern the Labour Relations Board in seeking  
25 injunctions of the courts and, as I said earlier today,  
26 private parties have been prohibited from seeking  
27 injunctive remedies.

28 MR. POLLOCK: But there has been an  
29 alternative course of relief provided by subsequent  
30 legislation, legislation after Norris-LaGuardia that



*Nethercut & Young**Toronto, Ontario*

1 has said that in these type of situations which prior  
2 to Norris-LaGuardia would prevent it by injunction,  
3 they are against the law and that they are an unfair  
4 practice and can be dealt with through the administra-  
5 tive procedure?

6 MR. INGLE: Yes.

7 MR. POLLOCK: So that if you are going  
8 to impose Norris-LaGuardia in Ontario and assuming that  
9 there is an equivalent application between the American  
10 jurisdiction and the Canadian or Ontario jurisdiction,  
11 then you would also have to bring with it many of the  
12 subsequent provisions that form the whole of the  
13 regulation of picketing?

14 MR. INGLE: I realize there are other  
15 alternatives.

16 MR. POLLOCK: But what I am saying is  
17 that if Norris-LaGuardia had been a satisfactory act it  
18 would not have required subsequent amendments to the  
19 legislation.

20 MR. INGLE: That is to some extent polit-  
21 ical.

22 THE COMMISSIONER: Can you give an ex-  
23 ample of what you have in mind?

24 MR. INGLE: As to the Norris-LaGuardia  
25 Act?

26 THE COMMISSIONER: And subsequent acts.

27 MR. INGLE: Under the subsequent acts  
28 there are specific provisions in certain situations.

29 THE COMMISSIONER: Isn't that in contra-  
30 diction to the provisions of the Act to which we are





1 subject?

2 MR. INGLE: I don't think so. I don't  
3 know whether Mr. Pollock agrees with me but I don't  
4 think that it is in contradiction.

5 MR. POLLOCK: I think what I am saying is  
6 that if you are going to take the position that Norris-  
7 LaGuardia is saying you can't go to court for an injunc-  
8 tive remedy then you probably, to be consistent, have to  
9 take the other approach, the other avenue of remedies  
10 available.

11 MR. INGLE: I think this is where we may  
12 be in disagreement.

13 MR. POLLOCK: You are only taking speci-  
14 fic suggestions which are contained in the Norris-  
15 LaGuardia Act. I am only saying you take the whole  
16 bundle of American labour legislation.

17 MR. INGLE: We don't feel we have to do  
18 that even to be consistent because some of these - -  
19 the Norris-LaGuardia Act has been in existence in the  
20 United States since 1932 and some of the amendments you  
21 are talking about are as recent as 1959 so even there  
22 they didn't feel for many years that they had to take  
23 the whole bundle and even modify it in the future. We  
24 don't know. We don't want to give the commission the  
25 impression that we are wanting the whole thing; we are  
26 not but these specific things we think would be useful.

27 THE COMMISSIONER: Those particular pro-  
28 visions have virtually nullified the power to obtain an  
29 injunction under that Act.

30 MR. INGLE: I think this is true.



1 MR. POLLOCK: And that is the need that  
2 has arisen to amend the remaining legislation to provide  
3 the legislative machinery to correct it.

4 MR. INGLE: I think not altogether be-  
5 cause the issuance of injunctions in the kind of situa-  
6 tion we have been objecting to, has virtually been  
7 done away with in the United States and what has been  
8 preserved is the use of injunctions in extraordinary  
9 situations such as, for example, the situation the  
10 Commissioner referred to earlier today. This has been  
11 preserved. But to a great extent the use of injunctions  
12 in the United States has in effect been abolished and as  
13 far as I have been aware there has been no great clamor  
14 on the part of the unions, the general public or any-  
15 body else to go back to the old situation which is, to a  
16 large extent, what we have today.

17 MR. POLLOCK: Oh no, because that clamor,  
18 if you want, has been headed off at the pass by having  
19 other legislations come in and they have got a remedy.  
20 They go to the Labour Relations Board and get an unfair  
21 labour clause, a hot cargo clause and other things that  
22 formerly they would have got by way of injunction. It  
23 has transferred really what the Norris-LaGuardia Act and  
24 subsequent legislation has done. It has transferred a  
25 type of relief from the courts to an administrative  
26 tribunal. I say if you are going to be consistent you  
27 have to find some place to transfer that function to  
28 if you are going to take it away from the courts.





1 MR. INGLE: Are there any other questions?

2 MR. POLLOCK: While we are on that, I  
3 want to ask a question in relation to (c) of the sub-  
4 missions that you make. How are you going to establish,  
5 or how are you going to prove in this kind of an area  
6 that greater injury will be inflicted upon the plaintiff  
7 by the denial of relief than will be inflicted upon  
8 the defendants by the granting of the relief?

9 MR. INGLE: All I know, Mr. Pollock, is  
10 that this requirement has worked in the other juris-  
11 dictions. The details of how it has worked and how  
12 the relative merits of one case against the other are  
13 judged, I am not fully familiar with, but it has been  
14 in effect now for many years and there must be some  
15 experience on which we can draw.

16 MR. POLLOCK: It has worked in the sense  
17 that it is so impossible to prove that if that is a  
18 condition of obtaining an injunction and you can't  
19 prove it, therefore, there is no injunction.

20 THE COMMISSIONER: They have discovered  
21 scales that we have not dreamed about.

22 MR. INGLE: Perhaps they have, sir, but  
23 I would not agree with Mr. Pollock that this has elimina-  
24 ted them altogether.

25 MR. POLLOCK: No, but it certainly has  
26 curtailed them.

27 MR. INGLE: In many cases they are  
28 granted. There must be measures, or at least yardsticks  
29 by which they can measure this kind of thing.

30 MR. POLLOCK: The final one, (e) there



1 has been considerable difficulty in the case law in  
2 the United States to establish that the public officers  
3 are unable or unwilling to furnish adequate protection.  
4 It is a question of what that means. If they could  
5 recruit more policemen and bring them to the site then  
6 perhaps they could operate.

7 MR. INGLE: I have not seen how this is  
8 done in practice, but, as I understand it, under their  
9 procedure one of the - it isn't a party - but one of  
10 the persons who must be notified must be given notice  
11 of an application for an injunction by the Labour  
12 Relations Board is the local police force, and they are  
13 required to come in and give evidence with respect to  
14 whether or not the five policemen in this town are able  
15 to cope with 2,000 pickets and if they say "Well, this  
16 is beyond us, we can't do this", therefore, we need  
17 the court's help to preserve law and order, preserve  
18 the ordinary rights that citizens have, that is one  
19 thing but if the police come before the court and say  
20 "We are perfectly capable of handling this situation"  
21 then the employer's case for an injunction is consider-  
22 ably weakened. I am not aware of the difficulty - I am  
23 sure they have difficulties in applying this section,  
24 but somehow or other they have seemed to be successful  
25 in it.

26 MR. POLLOCK: By subsequent legislation.

27 MR. INGLE: Well, I am not sure that I  
28 agree with that. I do not propose to deal with the last  
29 section on the office units which was dealt with by  
30 District Director Sefton in connection with office



1 procedures and, subject to any questions which the  
2 Commission has, that is our presentation.

3 THE COMMISSIONER: I would like to put  
4 to you a question we have put to others, just for the  
5 purpose of obtaining your opinion. Suppose you get rid  
6 of both the picket line and the employment of strike  
7 breakers, what <sup>would</sup>/your view be of such a measure with  
8 provisions for modifying imbalances that may occur by  
9 dealing with the right of employees to seek other  
10 employment and decertification in the case of a union  
11 that is powerful and an employer is weak? You would get  
12 rid of all this intricate consideration of injunctions  
13 and one thing and another and the employment of strike  
14 breakers.

15 MR. INGLE: I would like to ask my  
16 colleague Mr. Park if he could comment on that.

17 THE COMMISSIONER: I would like, partic-  
18 ularly, to have the objections to it, to such a pro-  
19 posal.

20 MR. PARK: To a proposal that strike  
21 breaking, as such --

22 THE COMMISSIONER: The picket line and  
23 strike breaking be abolished and some subsidiary action,  
24 discretionary action as is necessary to maintain the  
25 integrity of both parties.

26 MR. PARK: I think that in terms of  
27 providing information, for example, when there is a  
28 strike in progress, there has to be some form of  
29 immediate notification to the people who may be wanting  
30 ingress to a plant. For example, in our modern day





1 the arrival of trucks and so on and so forth, they are  
2 despatched from their local office possibly without  
3 any knowledge of either management or worker, for  
4 example, that a strike is in progress at X plant, and  
5 for that reason ---

6 THE COMMISSIONER: That is a minor  
7 feature.

8 MR. PARK: So, therefore, on the question of  
9 eliminating completely the picket line/<sup>it</sup> is my point here  
10 only, that information must be conveyed because,  
11 for example, that is the practice of the Teamsters Union,  
12 I understand, in the Province of Ontario generally to  
13 write into their collective agreements provisions that  
14 they need not cross picket lines, this is not a require-  
15 ment.

16 THE COMMISSIONER: If there is no picket  
17 line, there is no occasion to have that.

18 MR. PARK: My point is, if there is a  
19 strike in progress that the movement of goods becomes  
20 a very important issue. On the other hand, I am  
21 intrigued, and I think the labour movement generally  
22 would be intrigued, by the proposition that would either  
23 (a) if possible eliminate but certainly limit to a great  
24 extent picket lines if the alternative was the stopping  
25 of the hiring of strike breakers in the situation. I  
26 think what we have come to now is, we are past the  
27 point in our relationships where by the mere establish-  
28 ment of the Ontario Labour Relations Act and the accept-  
29 ance of the collective bargaining process as public  
30 policy which the Ontario Labour Relations Act does and



1 the previous Federal Acts before it, the Federal Orders-  
2 in-Council before it did, we have moved the question of  
3 labour management relationship off the old master and  
4 servant basis and onto a collective relationship and it  
5 seems to me that this is the area in which we have to  
6 contemplate our problems. They have to be solved  
7 collectively as well as approached collectively. So,  
8 therefore, I think somehow the old rights of management  
9 to individual relationship, master and servant relation-  
10 ship that / <sup>were</sup> employed have, in fact, been set aside by  
11 public policy and it is meeting this new area that ---

12 THE COMMISSIONER: I think that is so,  
13 that is the approach.

14 MR. PARK: That is the approach we were  
15 trying to make to the situation. Therefore, you have  
16 to find the solution in the collective decisions of  
17 (a) management on the one side, and (b) the workers  
18 as a collective group on the other side, and we live  
19 in that kind of a community now. This is the basis upon  
20 which we have attempted to draw our views as to how we  
21 should modify.

22 THE COMMISSIONER: You see, in Australia,  
23 which has a certain considerable analogy in position,  
24 picket lines and strike breakers are virtually unknown -  
25 nobody thinks about them in the case of a strike.

26 MR. PARK: I would tell you, sir, that  
27 you could almost draw the parallel to Canada. Strikes  
28 in certain industries don't require any picket lines.  
29 I can take you to industries where, when a strike is  
30 declared, the company locks the door because it makes





1 sense to lock the door.

2 THE COMMISSIONER: I might say the con-  
3 troversy really is confined to small industry.

4 MR. PARK: This is precisely the point  
5 and usually to underpaid industries and so on, because  
6 when you come to strike a steel mill, for example, one  
7 union has to make a very, very great determination on  
8 that kind of a point and the companies have long since  
9 abandoned any idea of trying to operate when a strike  
10 is trying to take place. We sit down and we work out  
11 with them how many people do you need for maintenance  
12 and so on and so forth, and people go to work and  
13 maintain the operation so that it will be in good shape  
14 when we are ready to go back to work. This is the  
15 civilized way of doing it.

16 THE COMMISSIONER: It is done on a good  
17 common sense level?

18 MR. PARK: Yes. It would be uneconomic  
19 for a major employer to contemplate strike breaking  
20 unless he could do it with 75 percent of his employees  
21 back to work.

22 THE COMMISSIONER: What would you say  
23 would be the limit of the employed force that would be  
24 able with, say, the lowest level of skill, to replace  
25 strikers? Could you do it with 300 men in a small  
26 factory, assuming that it is just more or less common  
27 labour that you use or work that can be picked up very  
28 quickly and assuming that it is the ordinary sized  
29 community?

30 MR. PARK: A good deal has to do with the



1 skills of the employees. If it is a large plant or the  
2 work is of a technical nature you would have to have<sup>men</sup>/who  
3 have that special skill that is necessary. On the other  
4 hand, as you say, if it is small and the men are easy  
5 to replace it is a simpler thing from the employer's  
6 point of view. I would hesitate to offer a figure to  
7 you, sir, because I have not contemplated <sup>it</sup>/that way.  
8 I would like to contemplate it but I don't think I  
9 can do that off the top of my head.

10 THE COMMISSIONER: In your experience of  
11 strikes, what is the greatest number of strike breakers  
12 you have ever seen taken in by a plant?

13 MR. PARK: Well, the only case I know of  
14 where there has been evidence in a court on this sort of  
15 situation involves the Gaspe Copper Case in Quebec.  
16 This is where the judgment was rendered against the union  
17 and it is in appeal at the present time, but there was  
18 evidence given and it is quoted by Mr. Justice Hyde  
19 of the Quebec Appeal Court in his judgment in the  
20 appeal we have made that is now on its way to the  
21 Supreme Court of Canada and it was company evidence  
22 that was given that he quotes. I can get you the  
23 precise figures, sir, this is done from memory, but he  
24 quotes the dates and the times and the numbers of  
25 workers that were reporting for work, etcetera, etcetera,  
26 over the period of the strike which started in March  
27 and was concluded around October or early November.

28 THE COMMISSIONER: Is the information<sup>in</sup>/here?

29 MR. PARK: I think the information on  
30 strikes here are the strikes in Ontario.



1 MR. POLLOCK: There are ninety-nine cases  
2 and you are talking of Gaspé.

3 THE COMMISSIONER: I want to know the  
4 numbers.

5 MR. PARK: The original work force was  
6 900. Over the period of that period from March to  
7 October, the company was able to recruit back from the  
8 900 original strikers something over 200. They reached  
9 a figure over 600, over 400 of them were imported  
10 strike breakers.

11 THE COMMISSIONER: Where did they bring  
12 them from?

13 MR. PARK: They brought them from all  
14 over - they brought immigrants, they brought people  
15 from all parts of the country.

16 THE COMMISSIONER: They went into it  
17 on a large scale?

18 MR. PARK: They went into it on a large  
19 scale.

20 THE COMMISSIONER: It was a company that  
21 had steadily refused, really, to recognize the union?

22 MR. PARK: The basic issue here was  
23 recognition of the union. It didn't appear that way  
24 in the superficialities of the situation, but that was  
25 the basic issue. That was, I think, the only case where  
26 documented evidence from the company's files, for  
27 example, was produced.

28 THE COMMISSIONER: Have you had any  
29 experience of small industries in which the strike was  
30 beaten by strike breakers?





1 MR. STOREY: I think there is one case  
2 that we have reported to you, Mr. Commissioner, in this  
3 city, a small fabricating plant, where we were just wiped  
4 out almost overnight by strike breakers.

5 MR. POLLOCK: I think there are three or  
6 four cases in which there were a handful of employees,  
7 twelve people, and they managed to get three from the  
8 outside and two stayed in so they had five and they  
9 operated and the strike was broken.

10 MR. PARK: Your problem is largely in  
11 your smaller units and these are the units, if I may  
12 say so, respectfully, that are the units where perhaps  
13 the conditions of wages and working conditions are such  
14 that there is most urgent need for effective unionism  
15 in the situation.

16 THE COMMISSIONER: Well, there is not  
17 much purpose then in striking if you can substitute  
18 and replace them so easily. All that does is to maintain  
19 the lower standards that you suggest.

20 MR. PARK: Well, it is maintained anyway  
21 and the strike may be in some respects a desperation  
22 effort in the circumstances.

23 MR. POLLOCK: It might increase the pay  
24 in the plant if this fellow has to hire strike breakers  
25 at a higher rate. Indirectly, your loss might be their  
26 gain.

27 MR. PARK: That is true.

28 THE COMMISSIONER: But you don't strike  
29 for that purpose?

30 MR. PARK: That is not our purpose for



1 striking, sir.

2 MR. POLLOCK: Well, if it has that effect  
3 you might as well claim it as your purpose. It does  
4 you no discredit.

5 THE COMMISSIONER: Have you any record  
6 that would show any light on that figure? Do the  
7 case histories go into detail on these particular  
8 features?

9 MR. INGLE: I believe so, sir.

10 THE COMMISSIONER: Then, that is all  
11 right.

12 MR. POLLOCK: I think the reference is  
13 to the case histories that are filed with the Commission,  
14 some ninety-nine that have occurred in the last ten  
15 years in this province, I think that it is a conspiracy  
16 that there are ninety-nine and not one hundred - now  
17 we have to calculate them all on the basis of percentage  
18 and it would have been much easier if you had had one  
19 more.

20 MR. PARK: Are you advocating strikes?

21 MR. POLLOCK: I think you are hiding one.

22 MR. INGLE: If we had gone on another  
23 month or two, we might have reached the one hundred.

24 MR. POLLOCK: You probably would have  
25 exceeded it. I think there are some factors that are  
26 raised in these studies, and perhaps we might be able  
27 to explore with your research people at another time  
28 so that we can amplify some of the material that is  
29 provided in there in this particular area.

30 MR. INGLE: We would be very happy to do





1 that, sir.

2 MR. POLLOCK: I had some questions about  
3 those things, but they are of such a nature of explanation  
4 that probably they can be done at another time without  
5 tying up the public hearing.

6 MR. INGLE: Well, we will be at your  
7 service in that connection. Any additional information  
8 either in respect of those or other matters, we have made  
9 a note of two or three things that have been asked about,  
10 we will be glad to furnish.

11 MR. POLLOCK: I must say to the credit of  
12 the Steelworkers that this is an extremely thorough and  
13 valuable study so far as the Commission is concerned.  
14 We appreciate that you have big shoulders on which these  
15 problems rest because of your size and organization, and  
16 we certainly are appreciative of the amount of work that  
17 you obviously have put into this preparation of your  
18 brief and the case studies which are really an invaluable  
19 record, and it is unfortunate that we do not have this  
20 type of record from all unions and employers as well.  
21 We are now trying to do our best to compile such a basis  
22 for analysis.

23 Certainly, your Union ought to be given  
24 full marks for the credible job which you did in this  
25 regard.

26 MR. INGLE: Thank you very much.

27 THE COMMISSIONER: This hearing is adjourned  
28 until 10:00 o'clock tomorrow morning.

29

30 ---Adjournment.













BINDING SECT. OCT 20 1967



